

RESOLUTION NO. 2009-58

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING USE PERMIT FILE NO. U-02-12 TO ALLOW THE CONSTRUCTION OF A COMMERCIAL SHOPPING CENTER IN THE C-S ZONE AND ALLOW THE SALE OF ALCOHOLIC BEVERAGES AT THE WAL-MART SUPERCENTER; APPROVING THE TENTATIVE PARCEL MAP 03-P-001 TO CREATE 12 PARCELS FOR THE PROJECT RELATING TO THE LODI SHOPPING CENTER; AND PROVIDING THE ARCHITECTURAL APPROVAL OF A NEW COMMERCIAL BUILDING TO BE CONSTRUCTED AT 2640 WEST KETTLEMAN LANE (WAL-MART), AND MAKING FINDINGS AND STATEMENTS OF OVERRIDING CONSIDERATIONS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, an application was filed by Browman Development Company for a commercial shopping center at 2640 W. Kettleman Lane more particularly described as Assessor's Parcel Numbers 058-030-08 and 058-030-02 and portion of 058-030-09; and

WHEREAS, the application is for the following approvals: Use Permits for the construction of commercial structures as required by the C-S Commercial Shopping District and for the sale of alcoholic beverages, a Vesting Tentative Map to create 12 parcels for the project, and architectural approval of a new commercial building including elevations and colors to be used for the construction of a Wal-Mart store located at 2640 W. Kettleman Lane (the "Project"); and

WHEREAS, the Planning Commission of the City of Lodi, after more than ten (10) days published notice, held a public hearing before said Commission on April 8, 2009; and

WHEREAS, the Planning Commission voted 3-3 on a motion to approve the requests and make the findings, which resulted in a denial of the Project approvals; and

WHEREAS, the Project is consistent with all elements of the General Plan, and in particular, the following General Plan Goals and Policies:

- A. Land Use and Growth Management Element, Goal E, "To provide adequate land and support for the development of commercial uses providing goods and services to Lodi residents and Lodi's market share."
- B. Land Use and Growth Management Element, Goal E, Policy 7, "In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality."
- C. Land Use and Growth Management Element, Goal E, Policy 3, "The City shall encourage new large-scale commercial centers to be located along major arterials and at the intersections of major arterials and freeways."
- D. Housing Element, Goal C, "To ensure the provision of adequate public facilities and services to support existing and future residential development".
- E. Circulation Element, Goal G, "To encourage a reduction in regional vehicle miles traveled."

- F. Circulation Element, Goal A, Policy 1, "The City shall strive to maintain Level of Service C on local streets and intersections. The acceptable level of service goal will be consistent with financial resources available and the limits of technical feasibility."
- G. Noise Element, Goal A, "To ensure that City residents are protected from excessive noise."
- H. Conservation Element, Goal C, Policy 1, "The City shall ensure, in approving urban development near existing agricultural lands, that such development will not constrain agricultural practices or adversely affect the economic viability of adjacent agricultural practices."
- I. Health and Safety Element, Goals A, B, C, and D, "To prevent loss of lives, injury and property damage due to flooding." To prevent loss of lives, injury, and property damage due to the collapse of buildings and critical facilities and to prevent disruption of essential services in the event of an earthquake. To prevent loss of lives, injury, and property damage due to urban fires. To prevent crime and promote the personal security of Lodi residents.
- J. Urban Design and Cultural resources, Goal C, "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

WHEREAS, the design and improvement of the site is consistent with all applicable standards adopted by the City. Specifically, the project has met the requirements of the Lodi Zoning Ordinance with particular emphasis on the standards for large retail establishments; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, these findings, as well as the findings made within City Council Resolution No. 2009-27 certifying Final Revised Environmental Impact Report EIR-03-01, are supported by substantial evidence in the record of this proceeding and before this body; and

WHEREAS, approval of the requested architectural drawings will allow the construction of a commercial building that will comply with the City's Zoning Ordinance and Building Code regulations; and

WHEREAS, the design of the proposed project and type of improvements are not likely to cause public health or safety problems in that all improvements will be constructed to the City of Lodi standards; and

WHEREAS, the City of Lodi has invested over sixteen million dollars in its Downtown area to revitalize and create a specialty retail and commercial destination within the City; and

WHEREAS, the Lodi Shopping Center will create retail and commercial shopping opportunities outside of the Downtown area; and

WHEREAS, the City of Lodi is committed to revitalizing its Downtown area and is requiring that all new retail and commercial developments contribute to that effort; and

WHEREAS, the City of Lodi recognizes that the applicant will make an in kind contribution to the redevelopment of the Downtown area.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED that the Lodi City Council does hereby approve the Project subject to the following findings, conclusions, and conditions of approval:

California Environmental Quality Act ("CEQA")

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The City Council incorporates herein by reference City Council Resolution No. 09-27, dated March 11, 2009 certifying the Final Revised Environmental Impact Report ("EIR") for the Project and finds that the EIR, as revised, adequately identifies all significant environmental effects of the project pursuant to CEQA.
3. As provided by Public Resources Code section 21081, CEQA Guidelines sections 15091, 15092, and 15093, and other relevant provisions of CEQA, the City Council hereby makes and adopts those Findings of Fact and Statement of Overriding Considerations ("Findings") set forth in Exhibit A, attached hereto and incorporated herein by reference. The City Council, exercising its own independent judgment, determines that such Findings are supported by substantial evidence in the record including, but not limited to, the information and materials contained in the EIR, as revised, all notices and other documents related thereto, those documents and materials described in California Public Resources Code section 21167.6(e), and those documents and materials referenced in the Findings.
4. The City Council hereby approves and adopts each and every mitigation measure proposed in the EIR, as revised, (and as set forth in Exhibit A, attached hereto) and makes such mitigation measures a required component of and incorporated into approval of the Project. The City Council further finds that, except as to impacts found by the EIR to be significant and unavoidable, implementation of the mitigation measures identified and discussed in the EIR will avoid or lessen to a level of less than significant those environmental effects identified in the EIR for which a mitigation measure is identified.
5. Pursuant to Public Resources Code section 21081.6, the City Council hereby approves and adopts the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit B and incorporated herein by reference, which was prepared in conjunction with the EIR. The Mitigation Monitoring and Reporting Program is made a required component and condition of approval of the Project.
6. Because the adoption of all feasible mitigation measures will not substantially lessen or avoid all significant adverse environmental effects caused by the project, the City Council adopts a Statement of Overriding Considerations concerning the Project's unavoidable significant impacts to explain why the Project's benefits override and outweigh its unavoidable impacts on the environment as set forth in Exhibit A.
7. The City Council does hereby make its findings with respect to the significant effects on the environment resulting from the Project, as identified herein and in the hereinbefore mentioned EIR, with the stipulation that all information in the findings is intended as a summary of the full administrative record supporting the EIR, which full administrative

record is available for review through the Director of Community Development at his office in Lodi City Hall at 221 West Pine Street, Lodi, 95241.

8. Having reviewed and considered the Draft and Final EIR for the Project, as revised, and other relevant materials and information in the record, the City Council hereby approves the Project and makes the following specific findings relative thereto.

Use Permit and Tentative Map

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Said Tentative Map complies with the requirements of the City Subdivision Ordinance, and the Subdivision Map Act.
3. Said Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
4. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions.
 - A. The approval of the Use Permit expires within 24 months from the date of this Resolution. Should any litigation be filed or continued regarding this project, the time limit shown shall be tolled during the pendency of the litigation. Final Parcel Map(s) conforming to this conditionally approved Tentative Parcel Map shall be filed with the Public Works Department in time so that the Public Works Department may approve said map before its expiration pursuant to City Council Resolution 2008-125, unless prior to that date, the Planning Commission or City Council subsequently grants a time extension for the filing of the Final Parcel Map, as provided for in the City's Subdivision Ordinance and the Subdivision Map Act. The Public Works Department shall notify the City Council of any such approvals. It is the developer's responsibility to track the expiration date. Failure to request an extension will result in a refiling of the Tentative Map and new review processing of the map. Pursuant to Government Code section 66456.1, the applicant may seek multiple/phased final maps.
 - B. Prior to submittal of any further plan check or within 90 days of the approval of this project, whichever occurs first, the applicant and all property owners shall sign a notarized affidavit stating that "I (we), _____, the owner(s) or the owner's representative have read, understand, and agree to implement all mitigation measures identified in the Final Environmental Impact Report for the Lodi Shopping Center and the conditions of the City Council approving U-02-12 and 03-P-001." Immediately following this statement will appear a signature block for the owner or the owner's representative, which shall be signed. Signature blocks for the Community Development Director and City Engineer shall also appear on this page. The affidavit shall be approved by the City prior to any improvement plan or final map submittal.
 - C. Prior to issuance of any building permit on the site, each building shall be reviewed by the Site Plan and Architectural Review Committee for consistency with this resolution as well as all applicable standards of the City.
 - D. All applications for Site Plan and Architectural Review Committee consideration shall comply with the following conditions:

1. All buildings shall comply with the requirements of C-S zoning district and meet setback requirements from the right of way shown on the site plan. All buildings shall implement building elements and materials illustrated on the submitted elevation or otherwise consistent with the architectural theme presented on the submitted elevation of the major tenant building.
 2. Submit a construction landscape plan consistent with the submitted conceptual landscape plan. The applicant shall also insure that the overall ratio of trees, including perimeter landscaping is equal to one tree for every four parking spaces. Further, said plan shall demonstrate that the City's requirement for parking lot shading is met.
 3. The applicant shall select and note on all plans common tree species for the parking lot and perimeter areas from the list of large trees as identified in the Local Government Commission's "Tree Guidelines for the San Joaquin Valley".
 4. All drive-through eating facilities shall have a "double service window" configuration and pullout lane to minimize auto emissions.
 5. Cart corrals shall to be provided in the parking lot adjacent to Wal-Mart and distributed evenly throughout the lots rather than concentrated along the main drive aisle. In addition, a cart corral shall be provided as close as possible to the two bus stop/shelters provided on-site. Further, cart corrals shall be permanent with a design that is consistent with the theme of the center. Portable metal corrals shall be prohibited. Developer shall install landscaping, curbing and other features to discourage removal of carts from the site. However, if such features prove ineffective, the Planning Director may require the installation of a cart wheel locking system.
 6. Trash enclosures shall be designed to accommodate separate facilities for trash and recyclable materials. Trash enclosures having connections to the wastewater system shall install a sand/grease trap conforming to Standard Plan 205 and shall be covered.
 7. Hardscape items, including tables, benches/seats, trashcans, bike racks, drinking fountains, etc. shall be uniform for all stores throughout the shopping center.
 8. All signage shall be in compliance with a detailed Sign Program that shall be submitted to SPARC for review and approval with the first building plan review.
 9. Said program shall require all signs to be individual channel letter at the standards provided by the zoning ordinance.
 10. Any bollards installed in a storefront location shall be decorative in style and consistent with the theme of the shopping center. Plain concrete bollards, or concrete filled steel pipe bollards shall not be permitted.
- E. All landscaped area shall be kept free from weeds and debris, maintained in a healthy growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. Unhealthy, dead, or damaged plant materials shall be removed and replaced within 30 days following written notice from the Community Development Director.

- F.** The following items are conditions of approval for the vesting tentative parcel map, all to be accomplished prior to, or concurrent with, final parcel map filing unless noted otherwise:
1. Project must receive and comply with all terms of the Cal Trans encroachment Permit necessary for access to Highway 12 directly from the Project and from Westgate Drive. Any conditions imposed by Cal Trans for the encroachment permit that result in site plan modifications shall be reviewed by City staff for consistency with Project approvals.
 2. Dedication of street right-of-way as shown on the parcel map with the following changes/additions:
 - a) Street right-of-way dedications on Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations resulting from Item #1 above. The dedications shall be to the approval of the Public Works Department.
 - b) Right-of-way dedications on Lower Sacramento Road and Kettleman Lane shall be in conformance with the lane geometries resulting from Item #1 above and City of Lodi street geometric requirements for this project and to the approval of the Public Works Department and Caltrans. Right-of-way dedications on Kettleman Lane shall be made to Caltrans in conformance with their requirements. Separate parcels shall be created for Caltrans dedications. It should be anticipated that Caltrans will require street widening improvements west of the project boundary. Acquisition of any right-of-way necessary to meet Caltrans requirements shall be the responsibility of the developer.
 - c) Lower Sacramento Road is an established STAA route and turning movements to and from the roadway into private driveways and intersecting streets are required to demonstrate that accommodation has been made for the truck turning movement in conformance with Public Works requirements.
 - d) The right-of-way dedication and driveway design at the south project driveway on Lower Sacramento Road shall accommodate and be in conformance with the California Semitrailer wheel track (18m/60ft radius) turning template.
 - e) Right-of-way dedications at all proposed project driveway locations shall be sufficient to accommodate the handicap ramps and public sidewalks at the crosswalk locations. In addition, the right-of-way dedication at the proposed traffic signal location on Lower Sacramento Road shall be sufficient to allow installation of the traffic signal improvements within the public right-of-way.
 3. Dedication of public utility easements as required by the various utility companies and the City of Lodi, including, but not limited to, the following:
 - a) A PUE along the southerly property line sufficient to accommodate the installation of electric utility overhead transmission lines and underground conduit bank which may be outside proposed landscape areas, and the extension of water, wastewater and industrial waste transmission lines between Lower Sacramento Road and Westgate Drive. We anticipate the

required PUE along the south project boundary will be on the order of 65 to 75 feet. It may be possible to reduce the width of the PUE by realigning some of the pipes through the shopping center site. The actual alignment and width will be to the approval of the Public Works Department and City of Lodi Electric Utility.

- b) A PUE at the proposed signalized project driveway to accommodate the installation of traffic signal loops.
 - c) A PUE at the existing southerly Sunwest Plaza (Food 4 Less) driveway to accommodate the installation of traffic signal loops. Acquisition of the PUE is the responsibility of the developer and must be accomplished prior to recordation of any final parcel map.
- 4. Provide a private access easement providing a clear path of travel for pedestrian traffic from the public right-of-way to all parcels within the boundaries of the map in conformance with ADA requirements.
 - 5. In order to assist the City in providing an adequate water supply, the property owner is required to enter into an agreement with the City that the City of Lodi be appointed as its agent for the exercise of any and all overlying water rights appurtenant to the proposed Lodi Shopping Center, and that the City may charge fees for the delivery of such water in accordance with City rate policies. The agreement establishes conditions and covenants running with the land for all lots in the parcel map and provides deed provisions to be included in each conveyance.

Submit final map per City requirements including the following:

- a) Preliminary title report.
 - b) Standard note regarding requirements to be met at subsequent date.
- 6. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
- G. The following items are conditions of approval for the vesting tentative parcel map and use permit that will be deferred until the time of development:
- 1. Engineering and preparation of improvement plans and estimate per City Public Improvement Design Standards for all public improvements for all parcels at the time of development of the first parcel. Plans to include:
 - a) Detailed utility master plans and design calculations for all phases of the development, including the proposed temporary storm drainage detention basin. Detailed utility master plans have not been developed for the area between Kettleman Lane on the north, Harney Lane on the south, Lower Sacramento Road on the east and the current General Plan boundary on the west. The project site is at the upstream boundary of the storm drain and wastewater utilities for this area. The developer's engineer shall provide a detailed drainage master plan, including engineering calculations, for the entire area as well as all phases of the proposed project. The developer's engineer shall prepare and submit a work plan/scope for master plan preparation for approval by the City Engineer prior to start of

master plan work. Master plans need to be coordinated with the Southwest Gateway development. City staff will assist in the master planning process to the extent practicable. Should City staff be unable to meet developer's schedule, developer shall have the option to pay the City to contract for supplemental outside consultant services to expedite review and approval of the master planning work.

- b) Current soils report. If the soils report was not issued within the past three (3) years, provide an updated soils report from a licensed geotechnical engineer.
- c) Grading, drainage and erosion control plan.
- d) Copy of Notice of Intent for NPDES permit, including storm water pollution prevention plan (SWPPP).
- e) All utilities, including street lights and electrical, gas, telephone and cable television facilities.
- f) Landscaping and irrigation plans for street medians and parkway areas in the public right-of-way.
- g) Undergrounding of existing overhead utilities, excluding transmission lines.
- h) Installation of the proposed traffic signal at the main project driveway on Lower Sacramento Road. The traffic signal shall be designed to operate **as** an eight phase signal.
- i) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the approval of the Public Works Department.
- j) Installation/modification of the traffic signal at the Kettleman Lane/Westgate Drive intersection as required by the project.
- k) Traffic striping for Lower Sacramento Road, Westgate Drive and Kettleman Lane.

A complete plan check submittal package, including all the items listed above plus the Map/Improvement Plan Submittal cover letter, Improvement Plan Checklist and engineering plan check fees, is required to initiate the Public Works Department plan review process for the engineered improvement plans.

2. There is limited wastewater capacity in the wastewater main in Lower Sacramento Road. The area of the shopping center site containing the proposed Walmart store lies outside the service area for the Lower Sacramento Road wastewater line. Developer shall perform a capacity analysis using approved flow monitoring protocols to assess the viability of utilizing the Lower Sacramento Road wastewater line on an interim basis. Wastewater facilities outside the Lower Sacramento Road service area shall be designed to allow future connection to the wastewater main in Westgate Drive. If the capacity analysis indicates that interim capacity in the Lower Sacramento Road wastewater line is not available, wastewater collection facilities shall be constructed to serve the project to the satisfaction of the Public Works Director.

3. Installation of all public utilities and street improvements in conformance with City of Lodi master plans and design standards and specifications, including, but not limited to, the following:
- a) Installation of all curb, gutter, sidewalk, traffic signal and appurtenant facilities, traffic control or other regulatory/street signs, street lights, medians and landscaping and irrigation systems in Westgate Drive, Kettleman Lane and Lower Sacramento Road.
 - b) All improvements on Kettleman Lane shall be in conformance with City of Lodi and Caltrans requirements and require a Caltrans encroachment permit. The Caltrans encroachment permit submittal package shall include a terminal access route application for STAA trucks. Additional right-of-way acquisition outside the limits of the map may be required. The City of Lodi will assist the developer in obtaining the additional right-of-way that may be required. Design and construction staking for the Kettleman Lane improvements will be performed by the City at the Developer's expense.
 - c) Street improvements in Westgate Drive shall be in conformance with the lane geometries, transitions and turn pocket configurations resulting from Item #1 above and landscaped median, parkway and sidewalk improvements required by the City. Developer shall have no obligation to do any work on Westgate Drive west of the westernmost curb.
 - d) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to construct a driveway to the approval of the Public Works Director. Acquisition of additional right-of-way and construction easements from the adjacent property to the south (APN # 058-140-04) may be necessary to accomplish this work and shall be the responsibility of the developer.
 - e) The extension/installation of all public utilities, including, but not limited to, the extension/installation of master plan water, wastewater, storm drainage and recycled water mains to the south end of Westgate Drive, the extension of water, wastewater and industrial waste transmission lines through the shopping center site from Lower Sacramento Road to Westgate Drive and the installation of recycled water main in Lower Sacramento Road and Westgate Drive from Kettleman Lane to the south project boundary. The cost of extending or installing recycled water mains shall be eligible for reimbursement. The developer's engineer shall work with Public Works Department staff to resolve public utility design issues.
 - f) Relocation of existing utilities, as necessary, and undergrounding of existing overhead lines, excluding electric (64 kv) transmission lines.
 - g) Project design and construction shall be in compliance with applicable terms and conditions of the City's Stormwater Management Plan (SMP) approved by the City Council on March 5, 2003, and shall employ the Best Management Practices (BMPs) identified in the SMP.
 - i) The City's adopted Stormwater Development Standards for new projects in conformance with the conditions of the City's Stormwater Discharge Permit. *The design of projects containing more than 5,000 square feet of impervious area, retail gasoline outlets and trash enclosures is significantly affected by these Standards.* The project shall be required to comply with the requirements of the Standards.

- ii) State-mandated construction site inspections to assure compliance with the City of Lodi Storm Discharge Permit are required. The fee for the inspections is the responsibility of the developer and must be paid prior to commencement of site grading and/or construction operations.
- iii) if bioswales are to be used, they need to be clearly delineated and detailed on the site plan and the landscape plan. Most trees are not compatible with bioswales.

The City and Applicant shall enter into an improvement agreement for the installation of public improvements required as part of the Project prior to the development of the first parcel.

4. The proposed temporary storm drainage basin shall be designed in conformance with City of Lodi Design Standards 53.700 and must be approved by the City's Public Works Department. Acquisition of property to accommodate the construction of the temporary drainage basin is the responsibility of the developer. All drainage improvements shall be designed for future connection to permanent public drainage facilities when they become available. In the event the Utility Master Plan referenced in paragraph 4(G)(1)(a) locates the permanent storm drainage basin in the same location as the temporary storm drainage basin, Project shall be entitled to reimbursement for its construction costs minus any cost to retrofit the temporary basin to serve as a permanent basin and meet public works permanent basin standards and specifications. Project's Stormwater Impact Fee shall be deferred pursuant to a Deferred Fee Payment Agreement as provided in Lodi Municipal Code Section 15.64.040 until such time as the reimbursement contingency set forth in this paragraph is resolved.
5. A Caltrans encroachment permit is required for all work in the Kettleman Lane right-of-way, including landscape and irrigation improvements in the median and parkway along the site frontage. Based on past experience, Caltrans will not allow landscape and irrigation improvements within their right-of-way unless the City enters into an agreement with Caltrans covering maintenance responsibilities for those improvements. The City is willing to execute such an agreement; however, the developer will be required to execute a similar landscape maintenance agreement with the City assuming the city's responsibilities for the landscape and irrigation improvements in the parkways.
6. Design and installation of public improvements to be in accordance with City master plans and the detailed utility master plans as previously referenced above.

Note that the developer may be eligible for reimbursement from others for the cost of certain improvements. It is the developer's responsibility to request reimbursement and submit the appropriate information per the Lodi Municipal Code (LMC) 516.40

7. All project design and construction shall be in compliance with the Americans with Disabilities Act (ADA). Project compliance with ADA standards is the developer's responsibility.

8. The following improvements shall be constructed with the development of the first parcel zoned for commercial development:
 - a) Installation of all street improvements on Lower Sacramento Road, Kettleman Lane and Westgate Drive. Street improvements for Lower Sacramento Road and Westgate Drive shall be constructed from the signalized intersections on Kettleman Lane to the south boundary of the parcel map. Street improvements along the frontages of Parcels 1, 12 and "A" shall extend to and include the installation of the westerly curb and gutter.
 - b) Modification of the existing southerly Sunwest Plaza (Food 4 Less) driveway to widen the driveway to the south as shown on the site plan and construct a driveway to the satisfaction of the City's Public Works Department.
 - c) The extension/installation of all public utilities necessary to serve the commercial development and/or required as a condition of development.
 - d) Temporary storm drainage detention basin to serve the project.
9. Acquisition of street right-of-way, public utility easements and/or construction easements outside the limits of the map to allow the installation of required improvements on Kettleman Lane, Lower Sacramento Road and Westgate Drive.
10. All property dedicated to the City of Lodi shall be free and clear of all liens and encumbrances and without cost to the City of Lodi and free and clear of environmental hazards, hazardous materials or hazardous waste. Developer shall prepare and submit a hazardous materials report and all property owners shall indemnify the City against any and all hazardous materials and/or ground water contamination existing on their individual property at the time of dedication for all property/easements dedicated to the City.
11. Abandonment/removal of wells, septic systems and underground tanks in conformance with applicable City and County requirements and codes prior to approval of public improvement plans.
12. The project shall provide for a prorated share of the on-going maintenance costs of median landscape improvements in Kettleman Lane, Lower Sacramento Road and Westgate Drive by annexation to the Lodi Consolidated Landscape and Maintenance District 2003-1 prior to acceptance of the public improvements. All costs associated with annexation to the District shall be the Developer's responsibility.
13. Payment of the following:
 - a) Filing and processing fees and charges for services performed by City forces per the Public Works Fee and Service Charge Schedule.
 - b) Development Impact Mitigation Fees per the Public Works Fee and Service Charge Schedule at the time of building permit issuance.
 - c) Wastewater capacity impact fee at the time of building permit issuance.
 - d) County Facilities Fees at the time of building permit issuance.
 - e) Regional Transportation Impact Fee (RTIF) at the time of building permit issuance.

- f) The City is currently developing a Water Capacity Impact Fee to pay for the costs to construct a water treatment plant necessary to provide water to the Project. In lieu of paying the fee as ultimately adopted, Project has agreed to pay a current fee estimate of \$765,050 (1.43 times project Sewer Service Units (SSU's) times \$5,000) prior to the development of the first parcel. The purpose of paying a fee now is to obtain certainty of costs and the Project shall not be subject to future assessment or refund in the event the fee is ultimately higher or lower than the amount set forth above.
- g) Stormwater compliance inspection fee prior to commencement of site grading and/or construction operations.
- h) Reimbursement fees per existing agreements:
 - i. Reimbursement Agreement RA-02-02. The reimbursement fee for 2009 is \$40,469.03. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - ii. Resolution No. 2007-52 establishing an area of benefit and reimbursable costs for Lower Sacramento Road (Kettleman Lane to Harney Lane) improvements. The reimbursement fee for 2009 is \$90,042.73. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - iii. Reimbursement Agreement RA 08-01. The reimbursement fee for 2009 is \$222,498.63. The fee is adjusted annually on January 1. The fee to be paid will be that in effect at the time of payment. The fee shall be paid prior to approval of the public improvement plans.
 - i) City Resolution 2006-234, adopted on December 20, 2006 amended the Electric Utility Department's Rules & Regulations 13, 15 and 16 and requires new development and this Project to pay the full cost of extending electric facilities to serve the Project.

The above fees are subject to periodic adjustment as provided by the implementing ordinance/resolution. The fee charged will be that in effect at the time of collection indicated above.

14. Obtain the following permits:

- a) San Joaquin County well/septic abandonment permit.
- b) Caltrans Encroachment Permit for work in Caltrans right-of-way.

15. The City will participate in the cost of the following improvements in conformance with LMC §16.40 Reimbursements for Construction:

- a) Master plan storm drain facilities and lines.
- b) Master plan water mains.
- c) Master plan reclaimed water mains.
- d) industrial waste lines.

Please note that construction of master plan wastewater facilities to serve the project site is not included in the City's Development Impact Mitigation Fee Program and is not subject to impact mitigation fee credits for sewer facilities or reimbursement by the City.

- H. Install fire hydrants at locations approved by the Fire Marshal.
- I. Shopping carts shall be stored inside the buildings or stored in a cart storage area adjacent to the entrance of the building.
- J. No outdoor storage or display of merchandise shall be permitted at the project unless a specific plan for such display is approved by SPARC. At no time shall outdoor storage or display be allowed within the parking area, drive aisle or required sidewalks of the center.
- K. Vending machines, video games, amusement games, children's rides, recycling machines, vendor carts or similar items shall be prohibited in the outside area of all storefronts. The storefront placement of public telephones, drinking fountains and ATM machines shall be permitted subject to the review and approval of the Community Development Director.
- L. All storage of cardboard bales and pallets shall be contained within the area designated at the rear of the Wal-Mart building for such use. No storage of cardboard or pallets may exceed the height of the masonry enclosure at any time.
- M. The loading area shown in front of the Wal-Mart building shall be stripped and posted with "NO PARKING - LOADING ONLY" signs to the satisfaction of the Community Development Director.
- N. A photometric exterior lighting plan and fixture specification shall be submitted for review and approval of the Community development Director prior to the issuance of any building permit. Said plans and specification shall address the following:
 - 1. All project lighting shall be confined to the premises. No spillover beyond the property line is permitted.
 - 2. The equivalent of one (1) foot-candle of illumination shall be maintained throughout the parking area.
- O. Exterior lighting fixtures on the face of the buildings shall be consistent with the theme of the center. No wallpacks or other floodlights shall be permitted. All building mounted lighting shall have a 90-degree horizontal flat cut-off lens unless the fixture is for decorative purposes.
- P. All parking light fixtures shall be a maximum of 25 feet in height. All fixtures shall be consistent throughout the center.
- Q. All construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. No exterior construction activity is permitted on Sundays or legal holidays.
- R. Prior to the issuance of a building permit for the new Wal-Mart Supercenter, the applicant shall ensure one of the following with respect to the existing Wal-Mart building located at 2350 West Kettleman Lane ("Building"):
 - a) The owner of the Building shall have entered into signed lease(s) with bona-fide tenant(s) for at least 50% of the Building square footage (not including the fenced, outdoor garden center). The signed lease(s) required hereunder shall include a lease(s) with a bona-fide retailer(s) or restaurant for a minimum of two-thirds of the Building frontage (not including the fenced, outdoor garden center); or

- b) The owner of the Building shall have entered into a fully executed purchase agreement for the Building with a bona-fide retailer; or
- c) The Applicant shall present to the City a cash escrow account, subject to the approval of the City Attorney, which account shall be for the purpose of securing applicant's obligation to demolish the Building not later than 90 days after the opening to the general public of the new Wal-Mart Supercenter (the "Opening Date"). The amount of the deposit shall be equal to the City estimated reasonable costs to demolish the Building (based on a licensed contractor estimate) plus \$100,000. The escrow account shall be paid to City in the event that Option (a), (b) or (c) is not satisfied within 90 days of the Opening Date. If Option (a), (b) or (c) is satisfied within 90 days after the Opening Date, the cash in the escrow account shall be refunded in full to the Applicant.

If the Applicant does not satisfy this condition under Option (a), (b) or (c) within 90 days after the Opening Date, the City shall use the funds to demolish the Building with any balance reverting to the City as compensation for its expense and inconvenience incurred to demolish the Building. The owner of the Building shall present evidence that any lender on the Building consents to the demolition in a form subject to the approval of the City Attorney. This condition shall be recorded against the property as a deed restriction, which runs with the land. Applicant and Wal-Mart agree to enter into any agreements that are necessary in order to implement this condition.

- S. No materials within the garden or seasonal sales area shall be stored higher than the screen provided.
- T. Wal-Mart shall operate and abide by the conditions of the State of California Alcoholic Beverage Control license Type 21, off sale-general.
- U. Wal-Mart shall insure that the sale of beer and wine does not cause any condition that will result in repeated activities that are harmful to the health, peace or safety of persons residing or working in the surrounding area. This includes, but is not limited to: disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passerby, assaults, batteries, acts of vandalism, loitering, illegal parking, excessive or loud noise, traffic violations, lewd conduct, or police detention and arrests.
- V. This Use Permit is subject to periodic review to monitor potential problems associated to the sale of alcoholic beverages.
- W. Prior to the issuance of a Type 21 license by the State of California Alcoholic Beverage Control Department, the management of the Wal-Mart store shall complete the Licensee Education on Alcohol and Drugs (LEAD) as provided by the State Alcoholic Beverage Control Department. In the event that Wal-Mart has training that is equivalent to the LEAD program, such documentation shall be submitted to the Community Development Director for review and approval.
- X. The project shall incorporate all mitigation measures as specified in the adopted Final Revised Environmental Impact Report EIR-03-01 and attached CEQA findings for the project.
- Y. The submitted Use Permit, Tentative Map and associated plot plan are hereby approved subject to the conditions set forth in this resolution.

- Z. No variance from any City of Lodi adopted code; policy or specification is granted or implied by the approval of this Resolution.
- AA. The sliding gates that are shown in the rear of the Wal-Mart building shall have a knox box system at each gate for Fire Department access.
- BB. Buildings, which are fire sprinkled, shall have Fire Department connections within 50 feet of a fire hydrant, subject to the Fire Marshall's approval.
- CC. Fire lanes shall be identified per Lodi Municipal Code 10.40.100 and marked in locations specified by the Fire Marshall. All fire lanes shall be a minimum of 24-foot-wide.
- DD. The water supply for the project shall meet the requirements for fire hydrants and fire sprinkler demand and system approved by the Fire Marshall.
- EE. Developer shall pay for the linkage study that the City is required to do based on Program 11 of the recently adopted Housing Element of the General Plan. The developer shall receive a credit for the amount paid against the final fee as adopted by the City Council.
- FF. Wal-Mart shall provide proof of sale, to a non Wal-Mart related entity, of the existing Wal-Mart property located at 2350 W. Kettleman Lane prior to the issuance of the building permit for the new Wal-Mart Supercenter without condition on the right of purchaser to lease or sell the existing Wal-Mart building.
- GG. Wal- Mart shall not allow overnight camping of any type (i. e. campers, recreational vehicles, tents) within the parking lot or site.
- HH. The developer shall invest in a building and/or capital improvements within the Downtown area, as defined by the Community Development Director, but no smaller than the area described in the June 1997 Downtown Development Standards and Guidelines plus the Pine Street Corridor extending to Washington. Investment shall be defined as supporting construction, rehabilitation, acquisition, tenant improvements and other improvements. The developer may make or support improvements to commercial buildings or property it owns or rents independently or in partnership with others, or to commercial property owned by others in partnership with owners and/or tenants. The downtown investment must be made no later than seven and a half (7.5) years from the issuance of final certificate of occupancy for the largest retail tenant. The total aggregate value of the capital improvements resulting from developer's investment must exceed \$700,000.

ARCHITECTURAL APPROVAL

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The submitted Site Plan complies with the requirements of the Commercial Shopping (C-S) Zoning District.
3. The submitted plans, including site plot plan and architectural elevations for the major anchor building, for the project is approved subject to the following conditions:
 - a. All conditions set for the above shall apply to this approval.
 - b. The proposed building shall comply with all zoning and building code regulations.
 - c. The finished building shall be consistent with the plans approved by the City Council.

- d. The applicant shall submit appropriate plans to the Community Development Department for plan check and building permit. The final plans shall include the architectural features such as the approved colors, the building elevations including the cornice, trim caps, and curbed canopy, and other elements approved by the City Council. Any significant alteration to the building elevations as approved by the City Council shall require approval by the Planning Commission. Signage shall be individual letters.
- e. Further architectural treatment shall occur on the west elevation. Such treatment shall result in a visual break in the elevation.
- f. The proposed building must comply with all City Council requirements; as well as the requirements of the Community Development, the Public Works, the Electric Utility and the Fire Departments; and all other utility agencies.
- g. No variance from any City of Lodi adopted code, policy or specification is granted or implied by the approval of this resolution.
- h. The Developer shall pay for Electric Utility Department charges in accordance with the Electric Department's Rules and Regulations.
- i. The applicant shall submit load calculations and Electric drawings to Electric Utility as part of a building permit process. Load calculations and Electric drawings are needed for service equipment location, PUE requirements, and service sizing. Should the load calculations and Electric drawings require a change of site plan, the Planning Department shall forward the site plan to the Planning Commission for review and approval.
- j. This resolution does not constitute a complete plan check. Complete plan check shall be completed during building permit process.
- k. Wal-Mart shall employ the energy efficient measures proven effective, at the time of Plan Check submittal, by its High Efficiency (HE) program in the building design and construction. However, the measures used shall, at a minimum, be as energy efficient as those proven energy efficiency measures, or comparable measures, outlined more fully in the letter addressed to the City of Lodi from J. Kelly Collier, Senior Design Manager for Wal-Mart Real Estate and Design dated October 6, 2008 and presented to the Planning Commission at its October 8, 2008 meeting.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED by the City Council of the City of Lodi that Use Permit U-02-12, Vesting Tentative Map 03-P-001, and Site Plan and Architectural review relating to the Lodi Shopping Center project; State Clearinghouse No. 2003042113 is hereby approved, and the City Council hereby adopts the findings, statements of overriding considerations and other matters set forth in this resolution.

Dated: May 13, 2009

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I hereby certify that Resolution No. 2009-58 was passed and adopted by the City Council of the City of Lodi in a special meeting held May 13, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – Hitchcock and Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

2009-58

**Exhibit A
(CEQA Findings)**

CITY OF LODI FINDINGS OF FACT AND STATEMENT OF
OVERRIDING CONSIDERATIONS PURSUANT TO THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
FOR THE LODI SHOPPING CENTER

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Under the California Environmental Quality Act, California Public Resources Code, sections 21000 et seq. ("CEQA"), for each significant environmental effect identified in an environmental impact report ("EIR) for a proposed project, the approving agency must issue a finding reaching one or more of three allowable conclusions in conjunction with approval of the project. The first allowable finding is that changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant effects on the environment. The second allowable finding is that those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by the other agency. The third allowable finding is that specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, made infeasible the mitigation measures or alternatives identified in the environmental impact report. (Cal. Pub. Res. Code § 21081; CEQA Guideline § 15091). CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or substantially reduce significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with some other agency (CEQA Guidelines, § 15091). Public Resources Code section 21061.1 defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." CEQA Guidelines section 15364 adds another factor: "legal" considerations. (See also Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 565 (1990)).

In situations in which significant impacts are not at least "substantially mitigated," the agency, after adopting the findings, may approve the project if it adopts a statement of overriding considerations setting forth the reasons why the agency found that the project's benefits render acceptable its unavoidable adverse environmental effects (CEQA Guidelines §§ 15093, 15043). The California Supreme Court has stated that, "[t]he wisdom of approving...any development project, a delicate task which requires a balancing of interests, is necessarily left to the sound discretion of the local officials and their constituents who are responsible for such decisions. The law as we interpret and apply it simply requires that those decisions be informed, and therefore balanced." (Citizens of Goleta Valley, supra, 52 Cal. 3d at 576).

The Findings and Statement of Overriding Considerations set forth below ("Findings") provide the written analysis and conclusions of the City regarding the Project's environmental impacts, mitigation measures, alternatives to the Project, and the overriding considerations and presents an explanation to supply the logical step between the Finding and the facts in the record. (CEQA Guidelines § 15091.) To the extent that these Findings conclude that various proposed mitigation measures outlined in the EIR are feasible and have not been modified, superseded or withdrawn, the City hereby commits to implementing these measures. These Findings, in other words, are not merely informational, but rather constitute a binding set of obligations that will come into effect as part of the Project approval. The mitigation measures are referenced in the Mitigation Monitoring Program, adopted concurrently with these Findings, and will be effective through the process of constructing and implementing the project.

I. AGRICULTURAL RESOURCES

A. LOSS OF PRIME AGRICULTURAL LAND

1. **Impact:** The project would convert approximately 40 acres of prime agricultural land to urban uses. While the severity of this impact can be reduced somewhat, no mitigation is available which would reduce this impact to a less-than-significant level except an outright prohibition of all development on prime agricultural lands. (Significant and Unavoidable Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.
3. **Finding:** The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the loss of prime farmland resulting from the project, but it would not reduce the impact to a less-than-significant level. There are no feasible mitigation measures available that would avoid the significant **loss** of agricultural land if the project is implemented. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact, therefore, remains significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the Draft REIR and Final REIR, there are no feasible alternatives or mitigation measures that would reduce the impact of loss of prime agricultural land resulting from the project to a less-than-significant level. The project's significant and unavoidable impacts to agricultural resources could be avoided by denying the project or lessened by requiring a substantially reduced project, which would prevent the conversion of all or a major portion of the site to urban uses. However, this action would not meet the fundamental objective of the applicant or the City of Lodi of developing the site for a commercial retail shopping plaza in conformance with the General Plan and zoning designations applicable to the site. In addition, denial of the project would not constitute a "feasible mitigation," and therefore would not be required under Section 15126.4 of the state CEQA Guidelines.

Although project-specific impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has minimized and substantially lessened the

significant effects of the proposed project on prime agricultural land through the requirement that an off-site agricultural conservation easement be acquired by the project applicant. The City has also generally minimized the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, agricultural preservation and protection is primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for **loss** of farmland since it cannot itself replace land lost to development. The City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has attempted to reduce the impact for the loss of prime agricultural land at the project site through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact on the project site to a less-than-significant level and, therefore, the impact remains significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council **has** found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenue for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will cause vital municipal infrastructure improvements to be implemented in the project vicinity, and development impact fees paid by the

applicant will help fund the project's proportionate share of contributions towards public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

II. GEOLOGY AND SOILS

A. SEISMIC HAZARD FROM GROUND SHAKING

1. **Impact:** Strong ground shaking occurring on the site during a major earthquake event could cause severe damage to project buildings and structures. (Significant Impact)
2. **Mitigation:** Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

All portions of the project will be designed and constructed in accordance with the Uniform Building Code guidelines for Seismic Zone 3 to avoid or minimize potential damage from seismic shaking at the site. Conformance with these requirements will be ensured by the Building Division through its routine inspection and permitting functions. These facts support the City's findings.

B. SEISMICALLY-INDUCED GROUND SETTLEMENTS

1. **Impact:** There is a potential for seismically-induced ground settlements at the site, which could result in damage to project foundations and structures. (Significant Impact)
2. **Mitigation:** If subsequent design-level geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and these buildings will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. Implementation of the recommendations will be ensured by the Public Works Department and Building Division through their routine inspection and permitting functions. These facts support the City's findings.

C. STORMWATER BASIN BANK INSTABILITY

1. **Impact:** There is a potential for bank instability along the banks of the proposed basin. (Significant Impact)
2. **Mitigation:** Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed along with the design-level improvement plans for the stormwater basin, and the Public Works Director will ensure that the basin is constructed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's findings.

D. ~~SOIL~~ CONSOLIDATION AND COLLAPSE

1. **Impact:** Soils present on the site are subject to moisture-induced collapse, which could result in damage to structures. (Significant Impact)
2. **Mitigation:** The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist, as appropriate, in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

E. EXPANSIVE SOILS

1. **Impact:** There is a low, but not necessarily insignificant, potential for soils expansion at the site, which could result in differential subgrade movements and cracking of foundations. (Significant Impact)
2. **Mitigation:** The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the approval of building permits for specific buildings, and the Public Works Department and Building Division will ensure that these buildings are designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

F. SOIL CORROSIVITY

1. **Impact:** The corrosion potential of the on-site soils could result in damage to buried utilities and foundation systems. (Significant Impact)
2. **Mitigation:** The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

As part of the mitigation for this impact, geotechnical investigations will be completed prior to the City's approval specific buried utilities and foundation systems for buildings, and these features will be designed in conformance with the geotechnical report's recommendations to reduce this potential hazard. These facts support the City's finding.

III. HYDROLOGY AND WATER QUALITY

A. EROSION AND SEDIMENTATION DURING CONSTRUCTION

1. **Impact:** During grading and construction, erosion of exposed soils and pollutants from equipment may result in water quality impacts to downstream water bodies. (Significant Impact)
2. **Mitigation:** A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. Typical measures required by the City of Lodi to be implemented during the grading and construction phase include the following:
 - Schedule earthwork to occur primarily during the dry season to prevent most runoff erosion.
 - Stabilize exposed soils by the end of October in any given year by revegetating disturbed areas or applying hydromulch with tetra-foam or other adhesive material.
 - Convey runoff from areas of exposed soils to temporary siltation basins to provide for settling of eroded sediments.
 - Protect drainages and storm drain inlets from sedimentation with berms or filtration barriers, such as filter fabric fences or rock bags or filter screens.
 - Apply water to exposed soils and on-site dirt roads regularly during the dry season to prevent wind erosion.
 - Stabilize stockpiles of topsoil and fill material by watering daily, or by the use of chemical agents.
 - Install gravel construction entrances to reduce tracking of sediment onto adjoining streets.
 - Sweep on-site paved surfaces and surrounding streets regularly with a wet sweeper to collect sediment before it is washed into the storm drains or channels.
 - Store all construction equipment and material in designated areas away from waterways and storm drain inlets. Surround construction staging areas with earthen berms or dikes.
 - Wash and maintain equipment and vehicles in a separate bermed area, with runoff directed to a lined retention basin.
 - Collect construction waste daily and deposit in covered dumpsters.
 - After construction is completed, clean all drainage culverts of accumulated sediment and debris.

The project also is required to comply with NPDES permit requirements, file a Notice of Intent with the Regional Water Quality Control Board and prepare a Storm Water Pollution Prevention Plan.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The above mitigation measures are derived from Best Management Practices (BMPs) recommended by the Regional Water Quality Control Board, and are to be included in the Storm Water Pollution Prevention Plan (SWPPP) to be prepared and implemented by the project proponent in conformance with the state's General Permit for Discharges of Storm Water Associated with Construction Activity. In addition, the project grading plans will conform to the drainage and erosion control standards of the City of Lodi, and will be incorporated into the project Improvement Plans to be approved by the City. Implementation of the erosion control measures will be monitored and enforced by City grading inspectors. These facts support the City's finding.

B. WATER QUALITY IMPACTS FROM NON-POINT POLLUTANTS

1. **Impact:** The project would generate urban nonpoint contaminants which may be carried in stormwater runoff from paved surfaces to downstream water bodies. (Significant Impact)
2. **Mitigation:** The project shall include stormwater controls to reduce nonpoint source pollutant loads.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

In January 2003, the City adopted a Stormwater Management Plan (SMP) to implement the provisions of its Phase II NPDES stormwater permit issued by the State Water Resources Control Board. The SMP contains a comprehensive program for the reduction of surface water pollution. The project includes feasible structural BMPs (Best Management Practices) such as vegetated swales and a stormwater basin. Much of the stormwater runoff generated in the northern and southern portions of the site will be conveyed to vegetated swales or bioswales which will provide partial filtering of pollutants and sediments. This partially treated runoff, along with all other parking lot and roof runoff from the project will be conveyed to the 3.65-acre stormwater basin planned adjacent to the southwest corner of the site. The basin would serve as a settling pond where suspended sediments and urban pollutants would settle out prior to discharge of the collected stormwater into the City's storm drain system, thereby reducing potential surface water quality impacts to drainages and water bodies. The pump intake for the basin will be located two feet above the bottom to provide for accumulation of sediments which would be cleaned out on a regular basis.

Non-structural BMPs typically required by the City include the implementation of regular maintenance activities (e.g., damp sweeping of paved areas; inspection and cleaning of storm drain inlets; litter control) at the site to prevent soil, grease, and litter from accumulating on the project site and contaminating surface runoff. Stormwater catch basins will be required to be stenciled to discourage illegal dumping. In the landscaped areas, chemicals and irrigation water will be required to be applied at rates specified by the project landscape architect to minimize potential for contaminated runoff. Additional BMPs, as identified from a set of model practices developed by the state, may be required as appropriate at the time of Improvement Plan approval. These facts support the City's finding.

IV. BIOLOGICAL RESOURCES

A. LOSS OF HABITAT FOR SPECIAL-STATUS SPECIES

1. **Impact:** The project would result in the loss of approximately 40 acres of foraging habitat for three protected bird species, and could result in the loss of breeding habitat for two protected bird species. (Significant Impact)
2. **Mitigation:** In accordance with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California horned larks, as well as the implementation of specified measures if any of these species are found on the site.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The in-lieu mitigation fees prescribed under the SJMSCP vary depending on the location of the site, its designation under the SJMSCP, and annual adjustments. The project site is covered by two designations or pay zones under the SJMSCP. The 20.5-acre eastern portion of the shopping center site, is designated "Multi-Purpose Open Space Lands," where in-lieu fees are currently \$6,165 per acre (2008). The 19.5-acre western portion of the site, which includes the proposed stormwater basin, is designated "Agricultural Habitat and Natural Lands," where in-lieu fees are currently \$12,329 per acre (2008). The compliance with the provisions of the SJMSCP, along with the prescribed preconstruction surveys and any required follow-up measures prescribed at that time, would fully mitigate the small reduction in foraging habitat resulting from development of the project site. The applicant's duty to mitigate the loss of agricultural land at a 1:1 ratio will further mitigate the **loss** of foraging habitat. These facts support the City's finding of less-than-significant after mitigation.

B. IMPACTS TO BURROWING OWLS AND RAPTORS

1. **Impact:** The project could adversely affect any burrowing owls that may occupy the site prior to construction, and could also adversely affect any tree-nesting raptor that

may establish nests in trees along the project boundaries prior to construction. (Significant Impact)

2. **Mitigation:** The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:
 - If ground disturbance is to occur during the breeding season (February 1 to August 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer.
 - If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While none of these species are currently on the project site, this mitigation measure is included as a contingency to be implemented in the event nesting occurs prior to construction. As specified in the Mitigation Monitoring and Reporting Program attached to this document, the Community Development Director will ensure that the pre-construction surveys are undertaken and that a report of the survey findings is submitted to the City prior to the approval of the project Improvement Plans. If any of the species are found on-site during the surveys, the Public Works Director will ensure that the required setback zones are established. No grading or construction in the vicinity of the nests would be permitted until the project biologist is satisfied that impacts to the species are mitigated or avoided. Relocation of burrowing owls would be allowed to occur only under the direction of the California Department of Fish and Game. These facts support the City's finding.

V. CULTURAL RESOURCES

A. IMPACTS TO CULTURAL RESOURCES

1. **Impact:** It is possible that previously undiscovered cultural materials may be buried on the site which could be adversely affected by grading and construction for the project. (Significant Impact)
2. **Mitigation:** Implementation of the following measures will mitigate any potential impacts to cultural resources:
 - In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report.
 - In the event that **fossils** are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report.
 - If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the detailed site reconnaissance by Basin Research Associates indicated that there is no evidence to suggest that cultural resources may be buried on site, the mitigation measure is a standard contingency that **is** applied in all but the least archaeologically sensitive areas. In the unlikely event artifacts are encountered during grading or excavation, the Public Works Director will enforce any required work stoppages, and the Community Development Director will contact the project archaeologist and will ensure that the archaeologist's recommendations are implemented. These facts support the City's finding.

VI. TRAFFIC AND CIRCULATION

A. NEAR TERM PLUS PROJECT UNSIGNALIZED INTERSECTION OPERATIONS

1. **Impact:** The addition of project-generated traffic would exacerbate LOS F operations at the intersection of Lower Sacramento Road / Harney Lane during both a.m. and p.m. peak hour conditions. (Significant Impact)
2. **Mitigation:** The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates calculated that with the above mitigation in place, the level of service at the affected intersection would rise to Level of Service C and thus meet the service standards of the City of Lodi. These facts support the City's finding.

B. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT SIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD FRONTAGE

1. **Impact:** During the p.m. peak hour, the eastbound left-turn queue length of 250 feet (average queue) to 375 feet (95th Percentile queue) of exiting vehicles would extend west to the internal intersection located south of Pad 10. (Significant Impact)
2. **Mitigation:** Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches at the on-site intersections adjacent to Pads 10 and 11, except the westbound approaches to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

C. CUMULATIVE PLUS PROJECT ACCESS CONDITIONS AT NORTHERN UNSIGNALIZED ACCESS DRIVE PROPOSED ALONG LOWER SACRAMENTO ROAD

1. **Impact:** The addition of a northbound left-turn lane under Access Alternative B would result in Level of Service F conditions at this unsignalized intersection. (This condition does not occur under Access Alternative A where no northbound left-turn movement would occur.) In addition, a non-standard 60-foot back-to-back taper is provided between the northbound left-turn lane (Alternative B) at the northern unsignalized access drive and the southbound left-turn lane at the signalized project entrance. (Significant Impact)
2. **Mitigation:** The following mitigations shall be implemented:
 - a. Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site;
 - b. Construct a 100-foot southbound right-turn lane at the signalized project driveway;
 - c. Extend the southbound left-turn pocket by 100 feet;
 - d. Extend the taper from 60 feet to a City standard 120-foot taper;
 - e. Eliminate the northbound left-turn lane into the northern driveway.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

D. INADEQUATE LEFT-TURN LANE TAPER ON WESTGATE DRIVE

1. **Impact:** On Westgate Drive, a non-City standard 64-foot back-to-back taper is proposed between the northbound left-turn lane at W. Kettleman Lane and the southbound left-turn lane at the northern project driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the potential for traffic conflicts arising from inadequate queuing capacity on Westgate Drive would be eliminated. These facts support the City's finding.

E. INADEQUATE LEFT-TURN LANE TAPER ON LOWER SACRAMENTO ROAD

1. **Impact:** On Lower Sacramento Road, a non-City standard 70-foot back-to-back taper is proposed between the dual northbound left-turn lanes at W. Kettleman Lane and the southbound left-turn lane at the middle Food 4 Less Driveway. (Significant Impact)
2. **Mitigation:** The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and to extend the taper from 70 feet to a City standard 120-foot taper.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the traffic report by Fehr & Peers indicated that mitigation for this impact would need to be achieved through closure of the southbound left-turn lane at the middle Food 4 Less Driveway, the applicant instead proposes to provide additional roadway right-of-way along the project frontage on Lower Sacramento Road to accommodate side-by-side left-turn lanes (instead of the back-to-back turn pockets as originally proposed). This would allow the mitigation to be implemented as specified while also maintaining the existing southbound left turn. Fehr & Peers Associates has reviewed the proposed roadway configuration and concurs that it would serve as adequate mitigation for the deficiencies noted in the EIR traffic impact report. Therefore, Fehr & Peers Associates concludes that with the above mitigation in place, the potential for traffic conflicts at this intersection would be eliminated. These facts support the City's finding.

F. PUBLIC TRANSIT SERVICE

1. **Impact:** Development of the project would create a demand for increased public transit service above that which is currently provided or planned. (Significant Impact)
2. **Mitigation:** The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigation in place, the additional demand for transit service generated by the project would not exceed the capacity of the transit system. These facts support the City's finding.

G. PUBLIC TRANSIT STOP

1. **Impact:** Development of the project would create an unmet demand for public transit service which would not be met by the single transit stop proposed for the northwest portion of the project. (Significant Impact)
2. **Mitigation:** Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop and passenger shelter in the eastern portion of the project near Lower Sacramento Road.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the transit service to the site would be adequate to meet ridership demand and would be provided in a manner which is convenient to transit riders, and which avoids traffic and circulation conflicts or congestion. These facts support the City's finding.

H. PEDESTRIAN FACILITIES

1. **Impact:** Development of the project would create an unmet demand for pedestrian facilities along West Kettleman Lane, Lower Sacramento Road and Westgate Drive, and internally between the different areas of the project site. (Significant Impact)
2. **Mitigation:** Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.
3. **Finding:** The above feasible mitigation measure, which has been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The traffic report prepared by Fehr & Peers Associates indicates that with the above mitigations in place, the pedestrian facilities provided in the project would be adequate to meet demand and provide for safe pedestrian movement throughout the project. These facts support the City's finding.

VII. NOISE

A. NOISE FROM PROJECT ACTIVITY

1. **Impact:** Noise generated by activity associated with the project would elevate off-site noise levels at existing and future residences in the vicinity. (Significant Impact)

2. **Mitigation:** The following noise mitigations are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:

Rooftop Mechanical Equipment. To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (L_{eq} -hour) for any residential yards.

Parking Lot Cleaning. To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The City of Lodi Building Official will require demonstration of compliance with noise specifications for rooftop mechanical equipment in conjunction with each individual building permit required for the project. The enforcement of the City Noise Regulations with respect to leaf blower noise will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

B. NOISE FROM STORMWATER BASIN PUMP

1. **Impact:** Occasional pumping of water from the stormwater basin would generate noise at the planned future residential areas to the south and west of the basin. (Significant Impact)
2. **Mitigation:** The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:
 - 1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.
 - 2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from an imminent storm).

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

The City of Lodi Public Works Director will require demonstration of compliance with noise specifications for the basin pump in conjunction with the Improvement Plans for the project. The enforcement of the City Noise Regulations with respect to the hours of pump operation will be the responsibility of the Community Development Director, who may enforce the noise restrictions with or without a citizen complaint from a nearby resident. These facts support the City's finding.

C. CONSTRUCTION NOISE

1. **Impact:** Noise levels would be temporarily elevated during grading and construction. (Significant Impact)
2. **Mitigation:** Short-term construction noise impacts shall be reduced through implementation of the following measures:

Construction Scheduling. The applicantkontractor shall limit noise-generating construction activities to daytime, weekday, (non-holiday) hours of 7:00 a.m. to 6:00 p.m.

Construction Equipment Mufflers and Maintenance. The applicantkontractor shall properly muffle and maintain all construction equipment powered by internal combustion engines.

Idling Prohibitions. The applicantkontractor shall prohibit unnecessary idling of internal combustion engines.

Equipment Location and Shielding. The applicantkontractor shall locate all stationary noise-generating construction equipment such as air compressors as far as practicable from existing nearby residences. Acoustically shield such equipment as required to achieve continuous noise levels of 55 dBA or lower at the property line.

Quiet Equipment Selection. The applicantkontractor shall select quiet construction equipment, particularly air compressors, whenever possible. Fit motorized equipment with proper mufflers in good working order.

Notification. The applicantkontractor shall notify neighbors located adjacent to, and across the major roadways from, the project site of the construction schedule in writing.

Noise Disturbance Coordinator. The applicantkontractor shall designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would notify the City, determine the cause of the noise complaints (e.g., starting too early, bad muffler, etc.) and would institute reasonable measures to correct the

problem. Applicant/contractor shall conspicuously post a telephone number for the disturbance coordinator at the construction site, and include it in the notice sent to neighboring property owners regarding construction schedule. All complaints and remedial actions shall be reported to the City of Lodi by the noise disturbance coordinator.

3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the above noise control measures and other measures which may be required by the City of Lodi. The construction noise control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. Although there are noise sensitive uses such as residential neighborhoods in the vicinity of the project site, most existing dwellings would be at least 200 feet away from the nearest grading and construction activity. This distance separation from the noise sources and the effective implementation of the above mitigation measures by the contractors, as monitored and enforced by City Public Works Department and Building Division, would reduce the noise levels from this temporary source to acceptable levels. These facts support the City's finding.

VIII. AIR QUALITY

A. CONSTRUCTION EMISSIONS

1. **Impact:** Construction and grading for the project would generate dust and exhaust emissions that could adversely affect local and regional air quality. (Significant Impact)
2. **Mitigation:** Dust control measures, in addition to those described in the FEIR, shall be implemented to reduce PM₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Air Pollution Control District (Air District). (See Original Draft EIR, p.120).
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

Each phase of grading and construction will be required to implement the dust control measures specified in the San Joaquin Valley Air Pollution Control District's Regulation VIII, as well as additional practices itemized in the FEIR and as otherwise required by the City of Lodi. The dust control measures will be required to be included as part of the General Notes on the project Improvement Plans, which must be approved by the City Public Works Department prior to commencement of grading. The Public Works Department will monitor and enforce the dust

suppression requirements as part of their site inspection duties. Violations of the requirements of Regulation VIII are also subject to enforcement action by the Air District. Violations are indicated by the generation of visible dust clouds and/or generation of complaints. These facts support the City's finding.

B. REGIONAL AIR QUALITY

1. **Impact:** Emissions from project-generated traffic would result in air pollutant emissions affecting the entire air basin. (Significant Impact)
2. **Mitigation:** Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions, including those measures described in the FEIR; however, these measures would not reduce the impact to a less-than-significant level.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. Therefore, the impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by Donald Ballanti concluded that the project would exceed the significance thresholds established for these pollutants. In addition, large commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts to less-than-significant levels. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund its pro-rata share of public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

C. RESTAURANT ODORS

1. **Impact:** The restaurant uses in the project could release cooking exhausts which could result in noticeable odors beyond project boundaries. (Significant Impact)
2. **Mitigation:** All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.
3. **Finding:** The above feasible mitigation measures, which have been required in, or incorporated into, the project, will avoid or substantially lessen the significant environmental impact described above to a less-than-significant level.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact will be reduced to a less-than-significant level.

While the nature and location of restaurants within the project has not been determined, this mitigation requirement will ensure that cooking odors from any on-site restaurants will not result in annoyance or nuisance conditions. The Building Official will ensure that the required equipment is included on the plans, and will ensure that the equipment is properly installed and functioning. These facts support the City's finding.

IX. CUMULATIVE IMPACTS

A. AGRICULTURAL LAND CONVERSION

1. **Impact:** The conversion of prime agricultural land at the project site, combined with the agricultural conversion associated with other foreseeable projects in the area, would result in a cumulatively substantial impact to agricultural resources. (Significant Impact)
2. **Mitigation:** The applicant shall obtain a permanent Agricultural Conservation Easement over **40** acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least **40** acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.
3. **Finding:** It is the City's current practice to require development projects to acquire off-site conservation easements to off-set the loss of prime farmland. The acquisition of an off-site agricultural conservation easement would provide partial mitigation for the cumulative loss of prime farmland resulting from development

projects, but it would not reduce the impact to a less-than-significant level. As with the project-specific agricultural impacts, there is no feasible mitigation measure available that would reduce or avoid the significant cumulative loss of agricultural land resulting from development of the proposed project and other foreseeable projects in the area. Specific economic, legal, social, technological or other considerations make mitigation of this impact infeasible. In particular, mitigation is infeasible because it is not possible to re-create prime farmland on other lands that do not consist of prime agricultural soils. This impact therefore remains significant and unavoidable.

4. Facts in Support of Finding: The following facts indicate that the identified impact is significant and unavoidable.

As discussed in the Draft REIR and Final REIR, there are no feasible measures that would reduce the impact of loss of prime agricultural land to a less-than-significant level. Although impacts to prime farmland cannot be feasibly mitigated to less-than-significant levels, the City has in fact minimized and substantially lessened the significant effects of development on prime agricultural land through requirements that an off-site agricultural conservation easement be acquired by project applicants. The City has also generally minimized the significant effects of development on prime agricultural land through the policies of its adopted General Plan. A principal purpose of the City's General Plan regulatory scheme is to minimize the impact on prime agricultural land resulting from the City's urban expansion. The City of Lodi is recognized for its compact growth pattern and clearly defined urban boundaries, its emphasis on infill development, and its deliberate and considered approach to urban expansion to accommodate housing and other long-term development needs. These guiding principles serve to minimize and forestall conversion of agricultural lands within the City's growth boundaries.

The General Plan policies related to agricultural preservation and protection are intended, and have been successful, in maintaining the productivity of prime agricultural land surrounding the City by controlling urban expansion in a manner which has the least impact on prime agricultural lands. In addition to maintaining compact and defined urban growth boundaries, agricultural preservation and protection are primarily accomplished through the City's Growth Management Plan for Residential Development, which limits housing development to a growth rate of two percent per year, and which gives priority to proposed residential developments with the least impact on agricultural land, in accordance with General Plan policy.

The General Plan implementation program includes a directive to "identify and designate an agricultural and open space greenbelt around the urbanized area of the City" (Land Use and Growth Management Implementation Program 10). This buffer zone is intended to provide a well-defined edge to the urban area, and to minimize conflicts at the urban-agricultural interface by providing a transition zone separating urban from agricultural uses, and to remove uncertainty for agricultural operations near the urban fringe. The greenbelt will perform an important function in minimizing urban-agricultural conflicts and promote the preservation of prime agricultural land beyond the greenbelt; however, it will not constitute mitigation for loss of farmland since it cannot itself replace land lost to development. In addition, the City is continuing to study the implementation of a greenbelt area between Stockton and Lodi, and is committed to the implementation of such a greenbelt.

In summary, the City of Lodi has applied feasible mitigation measures for loss of prime agricultural land at the cumulative project sites through the required acquisition of off-site agricultural conservation easements, and also through its extensive efforts to avoid the loss of prime farmland through its careful planning of urban areas within its boundaries. Nevertheless, the City recognizes that there is no feasible mitigation available to reduce this impact to a less-than-significant level on a project-specific or cumulative basis and, therefore, the impact remains cumulatively significant and unavoidable. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for Lodi residents. The project will cause vital municipal infrastructure improvements to be implemented in the project vicinity, and development impact fees paid by the applicant will help fund the project's proportionate share of contributions towards public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with the City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

B. REGIONAL AIR QUALITY IMPACTS

1. **Impact:** Emissions from project-generated traffic, combined with the emissions of other foreseeable projects in the area, would result in air pollutant emissions affecting the entire air basin. (Significant Cumulative Impact)
2. **Mitigation:** For the proposed project, design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions. However, these measures would not reduce the impact to a less-than-significant level, either on a project-specific basis or on a cumulative basis.
3. **Finding:** While the implementation of specified design measures and a TDM plan in conjunction with the project would reduce the level of the air quality impact, the impact would not be reduced to less-than-significant level. This impact would be exacerbated by emissions from other foreseeable projects in the area. Therefore, the cumulative impact is significant and unavoidable.
4. **Facts in Support of Finding:** The following facts indicate that the identified impact is significant and unavoidable.

Due to the large size of the project and the very low thresholds for significance established by the Air District for the emission of Reactive Organic Gases, Nitrogen Oxides, and fine Particulate Matter, the air quality report by environmental consultant, Donald Ballanti, concluded that the project would far exceed the significance thresholds established for these pollutants. In addition, large

commercial shopping centers attract high volumes of personal vehicles, and transportation alternatives such as public transit, carpooling, and bicycling have limited effectiveness in reducing automobile traffic generated by this type of project. Thus, although the City will require the implementation of selected Transportation Demand Management measures, as appropriate, it is estimated by Donald Ballanti that such measures would reduce project-generated traffic by no more than five percent. The small reduction in associated emissions would not reduce overall regional air quality impacts resulting from the proposed project to less-than-significant levels. Other foreseeable projects in the area may be more suitable for the implementation of TDM measures to reduce emissions on an individual project basis; however, the cumulative impact would not be reduced to a less-than-significant level. These facts support the City's finding.

5. **Statement of Overriding Considerations:** The following is a summary of the benefits that the City Council has found to outweigh the significant unavoidable impacts of the project, the full discussion of which can be found in the "Statement of Overriding Considerations" at the end of this document. The project is expected to provide substantial revenues for the City of Lodi General Fund through increased sales tax and property tax, and will generate employment opportunities for City residents. The project will implement vital municipal infrastructure improvements in the project vicinity, and impact fees paid by the project will help fund its pro-rata share of public services throughout the City of Lodi. The project will implement adopted City plans and policies by accomplishing the City of Lodi's long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. The project will reflect a high quality of design, through the on-site implementation of the City's Design Guidelines for Large Commercial Establishments, which will be particularly important at this visually prominent western gateway into the City.

IMPACTS ANALYZED IN THE REIR FOUND TO BE LESS LESS-THAN-SIGNIFICANT.

CEQA does not require that findings be made on impacts found to be less-than-significant (See CEQA Guideline § 15091 (requiring findings on impacts found to be significant)). Nonetheless, set forth below is a summary of the City's conclusions on new items analyzed in the REIR for which impacts were found to be *less-than-significant*.

I. LAND USE AND PLANNING – SOCIOECONOMIC/URBAN DECAY IMPACTS

Urban decay is the product of an economic chain reaction that results in the closures of retail businesses as a result of a project, such as a shopping center, which in turn leads to physical deterioration of the surrounding neighborhood and businesses. (See Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal. App. 4th 1184 (2004)). An EIR need only disclose and analyze the direct and reasonably foreseeable indirect environmental impacts of a proposed project if they are significant. (Guidelines, §§ 15126.2, 15064(d)(3)). An impact "which is speculative or unlikely to occur is not reasonably foreseeable." (CEQA Guidelines, § 15064(d)(3)). Mere economic and social impacts of proposed projects are outside CEQA's purview. However, when there is evidence that economic and social effects caused by a project, such as a shopping center, could result in a reasonably foreseeable indirect environmental impact, such as urban decay or deterioration, then the CEQA lead agency is obligated to assess this

indirect environmental impact. (See Anderson First Coalition v. City of Anderson, 130 Cal. App. 4th 1137 (2005)). As summarized below, urban decay impacts of the Project are found to be *less-than-significant*.

A. POTENTIAL FOR URBAN DECAY DUE TO SOCIOECONOMIC IMPACTS

1. Impact: The Project would include new retailers who would compete with existing retailers in the City of Lodi; however, there is insufficient evidence to suggest that this increased competition would result in business closures, and consequently would not indirectly result in substantial physical deterioration of properties, or urban decay (Less-than-Significant Impact).
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the economic effects of the project on local supermarkets general merchandise outlets, and businesses in Downtown Lodi. As explained further in the REIR and the BAE analyses, the evidence gathered as part of the economic analysis is insufficient to support a finding that the project alone would result in or contribute to business vacancies or a downward spiral resulting in physical deterioration or urban decay. While there may be some decline in sales of competing supermarkets, supermarket store closures are not reasonably foreseeable. Sales are expected to decline for general merchandise stores such as Target and Kmart. The Kmart store is at risk of closure. However, the owners of the Kmart site indicate that they feel they could find new tenants should Kmart close and cease operation, thus minimizing the prospect of long term vacancies or total neglect leading to urban decay. Furthermore, the City Council has directed diligent code enforcement, which will assist in the prevention of urban decay. The City is entitled to rely on the effectiveness of its Code Enforcement program to prevent code violations. (See City Municipal Code Section 1.10.010 et seq.; Cal. Health and Safety Code Sections 17980-17992). Downtown Lodi has shifted its retail mix to specialty stores, entertainment, and restaurants which are less directly competitive with the proposed project and therefore not anticipated to realize urban decay because of the Project. With respect to the closure of the existing Wal-Mart store in conjunction with the project, conditions would be imposed on the project requiring, prior to the issuance of a building permit, either re-tenanting by a retailer, sale to a retailer, or demolition of the structure to minimize the possibility of urban decay resulting from its closure.

In summary, even if the project were to result in the failure of one or more existing competing businesses, any resulting vacancy would not necessarily lead to urban decay. Other contributing factors would need to occur to result in urban decay, such as the failure of surrounding businesses, combined with little or no effort on the part of property owners to maintain or improve their properties to a condition suitable for leasing. To reach a condition recognized as a physical impact under CEQA would require total neglect or abandonment of these

properties by their owners for an extended period such that substantial physical deterioration or urban decay would ensue. Such a conclusion is not reasonably foreseeable. Moreover, the City Council has directed staff to pursue diligent code enforcement, and such an urban decay impact is not supported by substantial evidence in the record. Accordingly, this impact is found to be *less-than-significant*.

B. POTENTIAL FOR URBAN DECAY DUE TO CUMULATIVE ECONOMIC EFFECTS OF COMPETING RETAIL PROJECTS

1. Impact: When the effects of the project are combined with those of the other approved, pending, or probable future retail project in the project trade area (e.g., Reynolds Ranch), there is a likelihood existing retail centers in Lodi would be subject to reduction in sales. Consequently, it is possible, but not reasonably foreseeable, that one or more business closures could result, and that the affected properties could be subject to long-term vacancies under cumulative conditions, but not total neglect or abandonment. Moreover, aggressive enforcement action by the City of Lodi under existing municipal code and state law provisions relating to nuisance abatement is expected to prevent conditions which would result in substantial physical deterioration of potentially affected properties. Therefore, no urban decay is expected to occur under cumulative conditions. (Less-than-Significant Cumulative Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The DREIR, the FREIR, the BAE study and analysis included with the DREIR and the supplemental BAE Supplemental Reports dated October 1, 2008 and March 11, 2009, which are incorporated herein by reference, discuss the potential for urban decay. The analysis considered the proposed Reynolds Ranch development and other existing retail within the City, including, the Target Center (which includes a Target and a Safeway), the Cherokee Retail Center (which includes a Kmart and **OSH** store), the Sunwest Plaza (which includes the existing Wal-Mart and a Food 4 Less Supermarket), Vineyard Shopping Center (which includes a Mervyn's and Ace Hardware), Vintner's Square Center (which includes a Lowe's), retail at Lodi and Hutchins (which includes the former Albertsons, which is now an S-Mart, and a Rite Aid), Westgate Shopping Center (which includes a Raley's), Lakewood Mall (which includes local-sewing tenants) the Lockeford Payless IGA/True Value Hardware, the Downtown Lodi retail, as well as retail outside the Lodi Shopping Center Trade Area. The REIR also considered the then planned Wal-Mart supercenters in Stockton (as well as the existing store in Stockton on Hammer Lane) and Galt. The Stockton and Galt stores are not expected to have a cumulative economic impact within the Trade Area defined for the proposed project because the Trade Areas are not expected to overlap to any great degree. This is especially true considering Stockton's Ordinance No. 018-07 C.S. (August 14, 2007).

While it is possible that the project, in combination with the Reynolds Ranch project, will result one or more business closures, it is not reasonably foreseeable that such closures would lead to total neglect or abandonment of the

business or urban decay. Should there be a business closure, the potential for physical deterioration will depend largely on the commitment of the property owner to maintain the property. Should the owner fail to maintain the property, City code enforcement staff would pursue active and aggressive enforcement as previously directed by City Council.

As discussed previously, Downtown has shifted to a specialty niche market, concentrated on entertainment and dining as well as unique, locally owned shops. Under cumulative conditions, the impacts to Downtown may include a reduction in sales and some additional limitation on Downtown's ability to expand its niche, particularly if Reynolds Ranch included boutique-style stores and restaurants. However, no closures of downtown business, including the downtown Long's Drugstore, are anticipated to occur under cumulative conditions with the assumed general tenant mix for the Reynolds Ranch project. Thus, in the absence of anticipated store closures, there is no potential for urban decay in the Downtown under cumulative conditions.

Accordingly and as further explained in the **REIR**, even assuming a reasonable worst-case scenario that results in one or more business closure, urban decay impacts of the Lodi Shopping Center, when combined with the economic effects of projects such as Reynolds Ranch, would result in a *less-than-significant cumulative urban decay impact*.

II. ENERGY

Appendix F to the CEQA Guidelines provides that an EIR should consider potentially significant energy implications. (See also Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.4(a)(1) (energy mitigation measures should be discussed when relevant)). **As** summarized below, energy impacts of the Project are found to be *less-than-significant*.

A. ENERGY CONSUMPTION

1. Impact: The project would increase energy consumption in the construction and operational phases of the project. However, energy conservation measures incorporated into the design, construction and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than significant.
4. Facts in Support of Findings: The operation of the project would result in the consumption of about 162 billion BTU of electricity, natural gas, and transportation fuel per year. This is over 500 times more energy than the estimated 0.3 billion BTU in annual energy inputs that would be applied in an agricultural operation on the site. The energy consumed by the project operation would represent 1.9 percent of the total annual energy consumption in the City of Lodi ~~of~~ about 8,634 billion BTU, and about 0.002 percent of statewide energy consumption. However, there are a number of energy conservation measures beyond those required by Title **24** of the California Code of Regulations, which

will be incorporated into the design, construction, and operational aspects of the project, as discussed in the REIR, which would result in a considerable reduction in project energy consumption, particularly electricity. These measures include the use of skylights, energy-efficient HVAC units, solar-reflective roofing materials, energy-efficient lighting systems, and the reclamation of the "heat of rejection" from refrigeration equipment to generate hot water.

Fuel energy consumed during construction would be temporary and would not present a significant demand upon energy resources. Some incidental energy conservation would occur during construction through implementation of the noise mitigation measures identified in the Draft EIR such as fuel savings from the prohibition of unnecessary idling of vehicles and equipment. The incremental increase in the use of energy bound in construction materials would not substantially increase demand for energy compared to overall local and regional demand for construction materials.

The project demand for electricity would be approximately 4.42 gigawatt-hours per year during the operational phase; however, compared to the total electrical demand for the City of approximately 470 gigawatt-hours during 2005, the project would represent less than one percent of the total electrical demand in the City. The project demand for natural gas would be approximately 12.6 million cubic feet per year during the operational phase; however, compared with the total natural gas year demand for the City of approximately 3,892 million cubic feet during 2005, the project would represent about 0.3 percent of total gas demand.

The project would not result in a significant impact to energy resources since it would result in the consumption of relatively small amounts of energy, compared to statewide and local consumption rates, in both the construction and operational phases, and because the energy conservation measures incorporated into the design and operation of the project would avoid wasteful, inefficient or unnecessary consumption of energy.

B. IMPACT ON ENERGY SUPPLIES AND INFRASTRUCTURE

1. Impact: The increased demand for energy resulting from the project would not be substantial enough to require new or expanded sources of supply or the construction of new or expanded energy delivery systems or infrastructure capacity. (Less-than-Significant Impact)
2. Mitigation: None Required.
3. Findings: The above impact is less than cumulatively significant.
4. Facts in Support of Findings: The energy requirements associated with the project would not exceed the energy supplies available to the project or exceed the ability of the various energy infrastructures to provide adequate supplies of energy to the project, during normal and peak demand periods, for the foreseeable future. As such, no new energy supplies would need to be developed to serve the project, and no system improvements would be needed to the energy delivery infrastructure to serve the project. Therefore, the impact

of the project upon energy supplies and energy delivery infrastructure would be less than significant.

ADDITIONAL CONSIDERATIONS

A. GLOBAL WARMING

The issue of global warming has been raised in the processing of the REIR. At the time the initial EIR was prepared and certified in 2005, no commenter raised the issue of climate change despite there being general awareness of the issue within the scientific and environmental communities. At that time, CEQA also did not require an analysis of global warming impacts. Assembly Bill 32 ("AB 32"), known as the California Global Warming Solutions Act, Cal. Health & Safety Code §§ 38500 et seq., was passed in September 2006 and became effective on January 1, 2007. AB 32 sets a statewide goal to decrease greenhouse gas emissions to 1990 levels by the year 2020, and it directs the California Air Resources Board to develop regulations on greenhouse gas emissions verification and monitoring. Senate Bill 97 ("SB 97"), enacting Public Resources Code section 21083.05, was passed in August of 2007, and became effective January 1, 2008. SB 97 directs the Governor's Office of Planning and Research to prepare, develop, and transmit to the Resources Agency guidelines for feasible mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions, by July 1, 2009. It further directs that the Resources Agency certify or adopt those guidelines by January 1, 2010.

Both AB 32 and SB 97 were passed after the certification of the initial EIR, which occurred in February 2005. However, the issue of global warming is not a new concept, and it was known at the time the original EIR was certified in 2005. Comments concerning global warming impacts could have been, but were not, made on the initial EIR certified in 2005. Since no comments were made on the topic of global warming at the time the original EIR was circulated for public review, and because the Court did not order analysis of global warming impacts, the City is not required to analyze global warming impacts in this EIR. Additionally, AB 32 and SB 97 are not the type of new information contemplated by Public Resources Code section 21166 and CEQA Guidelines section 15162 that would require revisions to an EIR.

The City finds that it is not required to conduct an analysis of global warming in the FREIR, in part, because it is outside the scope of the FREIR prepared on remained and in response to the Superior Court's decision.. Nonetheless, the City notes that evidence and materials submitted by the applicant indicate that global warming impacts would be less than significant in any event and speculative on a cumulative level of analysis.

B. WATER SUPPLY ASSESSMENT

By letter dated December 10, 2008, the Herum Crabtree law firm suggests that a water supply assessment is required for the Project pursuant to California Water Code sections 10910, 10912, 10911 and Public Resources Code section 21159.9. Because this issue could have been raised at the time the initial EIR was prepared and certified in 2005, but was not raised, the commenter is precluded from raising the issue now under the legal doctrine of *res judicata*, and the City is not required to analyze this issue at this time. Nonetheless, the City notes that this Project does not satisfy the criteria for requiring a water supply study under the applicable statutes. Water supply assessments are required for projects meeting the following criteria:

- (1) A proposed residential development of more than 500 dwelling units.
- (2) A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
- (3) A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
- (4) A proposed hotel or motel, or both, having more than 500 rooms.
- (5) A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
- (6) A mixed-use project that includes one or more of the projects specified in this subdivision.
- (7) A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

(Cal. Water Code § 10912)

Based on evidence in the record, including evidence and testimony from the applicant concerning the size and nature of the Project, the City concludes that the proposed Project does not meet the square footage or water demand requirements set forth above. The project is an approximately 326,000 shopping center anticipated to employ less than 1,000 person. (See Sheppard Mullin letter of March 10, 2009). The City, therefore, concludes that it is not required to conduct a water supply assessment for the Project for the reasons that: (1) the issue was not raised during consideration of the EIR in 2005 and is now barred under the legal doctrine of *res judicata*; and (2) the Project does not meet the statutory criteria for requiring a water supply assessment.

FINDINGS CONCERNING ALTERNATIVES

Under CEQA, an EIR must describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Even if a project alternative will avoid or substantially lessen any of the significant environmental effects of the project, the decision-makers may reject the alternative if they determine that specific considerations make the alternative infeasible. The findings with respect to the alternatives identified in the Final REIR are described below.

I. NO PROJECT ALTERNATIVE

- A. **Description of the Alternative:** The No Project alternative consists of not building on the project site and possibly resuming agricultural cultivation of the property for oats, hay, or row crops.
- B. **Comparison to the Project:** The No Project alternative would avoid some of the significant unmitigable effects of the proposed project, such as conversion of prime farmland and regional air quality impacts. For all other areas of concern, the differences in impacts between the No Project alternative and the proposed project would not be significant because the project impacts could be reduced to less-than-significant levels through feasible mitigation measures. On balance, the No Project alternative would be superior to the proposed project because it would not result in the significant unavoidable

impacts to agricultural resources and air quality which are associated with the proposed project, and because it would result in little or no impact in the other impact categories.

- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The substantial revenues for the City of Lodi General Fund through increased sales tax and property tax that would be generated by the project would be lost, as would the employment opportunities for City residents created by the project. The vital municipal infrastructure improvements that would be constructed by the project would be foregone, as would the development impact fees paid by the applicant which would help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. Unlike the proposed project, the No Project alternative would not implement adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries, or the objective of meeting unmet retail demand from existing and future residents of Lodi. The No Project alternative also would not implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City. For the reasons mentioned above, because the No Project alternative would not meet the project objectives, and because the No Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

II. REDUCED PROJECT SIZE ALTERNATIVE

- A. **Description of the Alternative:** This alternative would consist of a substantially reduced project site of approximately 24 acres, including about 22 gross acres for retail development and 2 acres for the stormwater basin. This would represent approximately 60 percent of the proposed project size of 40 acres. This alternative would include the Wal-Mart Supercenter, as proposed, but would not include any of the ancillary retail pads proposed in the project.
- B. **Comparison to the Project:** The Reduced Project Size alternative would result in a slight reduction in the levels of impact associated with the proposed project in several topic areas, although these impacts would be mitigated to less-than-significant levels under the proposed project. For the two significant and unavoidable impacts associated with the proposed project – impacts to agricultural resources and regional air quality – the Reduced Project Size alternative would lessen these impacts but would not avoid them or reduce them to less-than-significant levels. Thus, although the Reduced Project Size alternative would be slightly superior to the proposed project, it would not achieve the CEQA objective of avoiding the significant impacts associated with the project.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The revenues for the City of Lodi General Fund that would be generated by the project would be substantially reduced, as would the number of employment opportunities for City residents created by the project. This alternative would not complete the vital municipal infrastructure improvements that would be constructed by the project, and would substantially reduce the development impact fees paid by the applicant to help fund the project's proportionate share of contributions towards vital public services throughout the City of Lodi. This alternative would lessen the City's ability to implement adopted City plans and policies for accomplishing long-term development plans for commercial use at the project site. This alternative would also compromise the City's

ability to implement the high quality of design reflected in the proposed project for this visually prominent western gateway into the City and for these reasons is not a feasible alternative. For the reasons mentioned above, because the Reduced Project alternative would not meet the project objectives, and because the Reduced Project alternative would not provide the same benefits as the proposed project, it is not a feasible alternative.

III. ALTERNATIVE PROJECT LOCATION

- A. **Description of the Alternative:** An alternative project site was identified in the unincorporated area of San Joaquin County known as Flag City, consisting of approximately 36 gross acres in the northeast quadrant of Highway 12 and Thornton Road, just east of 1-5. To allow direct comparison, it was assumed that a 36-acre portion of the lands at this location would be developed with roughly the same land use configuration and intensity as the proposed project.
- B. **Comparison to the Project:** The impacts associated with development of the Flag City site would be somewhat greater than for the proposed project site. Although the impacts for many categories would be similar for both project locations, development of the Flag City site would result in negative effects in terms of land use policy, and the resulting potential for growth inducement, which would not occur with the proposed project site. Traffic impacts would be greater for the Flag City site, as would impacts to utilities and public services, although these impacts would be less than significant or could be fully mitigated. More importantly, the alternative project site would result in the same significant and unavoidable impacts to agricultural resources and air quality as are associated with the proposed project. Therefore, the alternative site would not lessen or avoid the significant and unavoidable impacts of the project.
- C. **Finding:** This alternative is hereby rejected for the reasons set forth below.

The alternative project site is not environmentally superior to the proposed project site. In addition, due to its location outside the City of Lodi, the alternative site would not provide the benefits associated with the proposed project including increased municipal revenues and development impact fees for providing services, creation of employment opportunities for Lodi residents, meeting unmet retail demand from existing and future Lodi residents, construction of the project's proportionate share of vital municipal infrastructure improvements, and the opportunity to implement City goals and policies with respect to the commercial development of the project site (consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries), and the chance to provide a high quality development at the western gateway to the City. For the reasons listed above, this alternative is infeasible.

ENVIRONMENTALLY SUPERIOR ALTERNATIVE

Of the three project alternatives considered, only the No Project alternative would avoid or substantially lessen the significant impacts of the project. The significant and unavoidable impacts to agricultural resources and air quality associated with the proposed project would both be avoided by the No Project alternative. Since all other project impacts are either less than significant or can be reduced to less-than-significant levels through the implementation of feasible mitigation measures, the No Project alternative would not offer substantial reductions in impact levels under the other impact categories. Therefore, the No Project alternative would represent the environmentally superior alternative to the proposed project. The No Project alternative was

not selected because it would not meet the applicant's objective of developing the site for shopping center uses; nor would it meet the City's goals of enhancing its revenue base, creating jobs, providing vital municipal infrastructure, and implementing the City's policy objective of developing the site with commercial retail uses.

CEQA Guidelines Section 15126.6(e)(2) requires that if the environmentally superior alternative is the No Project alternative, the EIR shall also identify an environmentally superior alternative from among the other alternatives. The Reduced Project Size alternative was found to result in the same significant and unavoidable impacts to agricultural resources and air quality as the proposed project. However, it would result in slightly lower levels of impact in several impact categories, although these impacts would all be reduced to less-than-significant levels in conjunction with the proposed project. Therefore, the Reduced Project Size alternative represents the environmentally superior alternative. The Reduced Project Size alternative was not selected because it would not entirely fulfill the project objective of developing the proposed project site with a regional shopping center in conformance with the City of Lodi General Plan and zoning regulations, and because it would be substantially less effective than the proposed project in fulfilling the project objective of meeting unmet retail demand from existing and future residents of Lodi. It also would be substantially less effective than the proposed project in fulfilling the City's objective of enhancing its fiscal resources through increased sales tax and property tax revenues, or in meeting the objectives of creating new jobs, and providing a pro-rata share of vital municipal infrastructure.

Additional alternatives recently suggested in a letter dated December 10, 2008 from the law firm of Herum Crabtree include: (1) a "Reynolds Ranch" alternative; (2) an "East Lodi/Redevelopment Area" alternative; (3) a "Proportionately Reduced Size" alternative; and (4) a "High Efficiency" alternative. As noted above, the EIR must identify a reasonable range of alternatives which would feasibly attain most of the Project's objectives and would avoid or substantially lessen any of the significant effects of the project. The lead agency need not consider every conceivable alternative, and it has discretion to determine how many alternatives constitute a reasonable range. The EIR's discussion and analysis of alternatives satisfies the requirement in its of analyzing a reasonable range of alternatives. The additionally proposed alternatives need not be considered at this time. Furthermore, it has not been demonstrated that these additionally proposed alternatives would meet most of the project objectives and also avoid or substantially lessen the environmental effects of the Project. Based on materials in the record, including a letter dated March 10, 2009 from the law firm of Sheppard Mullin, the Reynolds Ranch, East Lodi/Redevelopment Area and Proportionately Reduced Size alternatives appear infeasible. Components of the High Efficiency alternative are included as part of the Project conditions, and thus, it has not been shown that the High Efficiency alternative would meet most of the project objectives and also avoid or substantially lessen the environmental effects of the Project.

In conclusion, the City finds that there are no alternatives to the Project which could feasibly attain most of the basic objectives of the project and also avoid or reduce the significant impacts associated with the proposed project to less-than-significant levels.

MITIGATION MONITORING PROGRAM

Attached hereto and incorporated and adopted herewith, is the Mitigation Monitoring and Reporting Program for the Lodi Shopping Center project. The Program identifies the mitigation measures to be implemented in conjunction with the project, and designates responsibility for the implementation and monitoring of the mitigation measures, as well as the required timing of their implementation.

STATEMENT OF OVERRIDING CONSIDERATIONS

Pursuant to Public Resources Code Section 21081 and CEQA Guidelines Sections 15091-15093, the City Council of the City of Lodi hereby adopts and makes the following Statement of Overriding Considerations regarding the remaining significant and unavoidable impacts of the project and the anticipated economic, social and other benefits of the project.

A. Significant Unavoidable Impacts

With respect to the foregoing findings and in recognition of those facts which are included in the record, the City Council has determined that the project would result in significant unavoidable impacts to prime agricultural land and regional air quality. While mitigation measures have been identified which will reduce these impacts, they cannot be mitigated to a less-than-significant level by feasible changes or alterations to the project.

B. Overriding Considerations

The City Council specifically adopts and makes this Statement of Overriding Considerations that this project has eliminated or substantially lessened all significant effects on the environment where feasible, and finds that the remaining significant, unavoidable impacts of the project are acceptable in light of environmental, economic, social or other considerations set forth herein because the benefits of the project outweigh the significant and adverse effects of the project.

The City Council has considered the EIR, the public record of proceedings on the proposed project and other written materials presented to the City, as well as oral and written testimony received, and does hereby determine that implementation of the project as specifically provided in the project documents would result in the following substantial public benefits:

1. Project Will Generate City Taxes. The sales generated by the Lodi Shopping Center will generate additional sales tax and property tax revenues for the City, which would otherwise not be generated by the undeveloped site. These revenues go to the City's General Fund which is the primary funding source for the construction, operation and maintenance of a number of essential City services, programs and facilities including fire and police services, recreation programs, transit operations, library services, public infrastructure such as water and sanitary sewer service, and administrative functions, among other things.
2. Project Creates Employment Opportunities for City Residents. The Lodi Shopping Center project will generate both temporary construction jobs as well as hundreds of permanent full-time and part-time jobs. The vast majority of the permanent jobs will not require special skills and therefore could be filled by existing local residents. Thus, with the exception of a very few management positions which will likely be filled by transferees from other localities, no specially-skilled workers would need to be "imported" from outside the City. Consequently, it is expected that City residents would benefit from added employment opportunities offered by the Lodi Shopping Center project.
3. Project Will Implement Vital Municipal Infrastructure Improvements. Through the development of the project, a number of public infrastructure projects will be constructed on the project site and the project vicinity. As described on page 15 of the Draft EIR, the project will construct planned roadway improvements along the portions of Lower

Sacramento Road and State Route 12/Kettleman Lane that front the project site, and as well as Westgate Drive to its full design width along the western project boundary. This is an economic benefit of the project in that these improvements would otherwise not be made without approval and implementation of the project. The project will also be conditioned to pay impact fees to the City in accordance with City's adopted Development Impact Fee program, which can be applied toward its pro-rata share of municipal improvements such as water, sewer, storm drainage, and streets, as well as police, fire, parks and recreation, and general City government. These are vital municipal improvements necessary to the function of the City and the quality of life for City residents, providing another economic benefit as well as social benefit of the project.

4. Project Implements Adopted City Plans. The project is situated within Lodi City limits and has been planned for commercial development in the current City of Lodi General Plan since its adoption in 1991. Therefore, the project implements adopted City plans and policies by accomplishing the City of Lodi long-term development plans for commercial use at the project site, consistent with City's growth control measures prioritizing in-fill development within the existing City boundaries. In addition, the project completes the development of the "Four Corners" area by providing a large-scale retail center on the last remaining undeveloped site at the Lower Sacramento Road/Kettleman Lane intersection consistent with the goals and policies of the City's General Plan and Zoning Ordinance.
5. Creates High Quality Design at Western Gateway to the City. The Lodi Shopping Center has been designed in conformance with the City's Design Standards for Large Retail Establishments which will ensure a consistent high quality of design throughout the project site. This is a particularly important consideration given the project's visually prominent location at the western gateway to the City, and will effectively implement the General Plan goal and policies which call for the establishment of identifiable, visually appealing, and memorable entrances along the principal roads into the City.
6. Project Features Numerous Energy Conserving Measures. The project proposes to include energy efficient and sustainable features as part of the project designs, including, for example, automated control system for heating/air conditioning, lighting controls, energy efficient lighting, and light colored roof materials to reflect heat.

In making the statement of overriding consideration in support of the findings of fact and this project, the City Council has weighed the above economic and social benefits of the proposed project against its unavoidable environmental risks and adverse environmental effects identified in the EIR and hereby determines that those benefits outweigh the risks and adverse environmental effects and, therefore, further determines that these risks and adverse environmental effects are acceptable.

Exhibit B
(Mitigation Monitoring and Reporting Program)

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

LODI SHOPPING CENTER

CITY OF LODI

APRIL 2009

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	B. AGRICULTURAL RESOURCES				
B1. <u>Agricultural Land Conversion</u>	B 1. The applicant shall obtain a permanent Agricultural Conservation Easement over 40 acres of prime farmland (1:1 mitigation ratio). The agricultural conservation easement shall consist of a single parcel of land of at least 40 acres. This easement shall be located in San Joaquin County (excluding the Delta Primary Zone as currently defined by State law). The easement shall be in current agricultural use; if it is not in current agricultural use, the easement shall be required to be put into agricultural production as a result of the conservation easement transaction. The lands subject to the easement shall be placed under permanent restrictions on land use to ensure its continued agricultural production capacity by limiting non-farm development and other uses that are inconsistent with commercial agriculture. The easement shall be held by the City or a qualified entity (i.e., land trust) approved by the City. The applicant shall pay a fee (in an amount to be determined by the City) for purposes of establishing an endowment to provide for adequate administration, monitoring, and maintenance of the easement in perpetuity.	Project Applicant with approval of City of Lodi. City of Lodi, California, Development Director.	Prior to issuance of occupancy permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	C. GEOLOGY AND SOILS				
C1. <u>Seismic Ground Shaking</u>	C1. Structural damage to buildings resulting from ground shaking shall be minimized by following the requirements of the Uniform Building Code, and implementing the recommendations of the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C2. <u>Seismic Settlement</u>	C2. If subsequent geotechnical studies indicate unacceptable levels of potential seismic settlement, available measures to reduce the effects of such settlements would include replacement of near-surface soils with engineered fill, or supporting structures on quasi-rigid foundations, as recommended by the project geotechnical engineer.	Project Applicant with approval by City of Lodi Building Official and Lodi Public Works Director.	Prior to issuance of grading permits.		
C3. <u>Stormwater Bank Stability</u>	C3. Design-level geotechnical studies shall investigate the potential of bank instability at the proposed basin and recommend appropriate setbacks, if warranted.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
C4. <u>Soil Consolidation and Collapse</u>	C4. The effects of soil consolidation and collapse can be mitigated by placing shallow spread foundations on a uniform thickness of engineered fill; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		
C5. <u>Expansive Soils</u>	C5. The potential damage from soils expansion would be reduced by placement of non-expansive engineered fill below foundation slabs, or other measures as recommended by the geotechnical engineer.	Project Applicant with approval of Lodi Public Works Director and Building Official.	Prior to issuance of grading permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
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	C. GEOLOGY AND SOILS (Cont'd)				
C6. <u>Soil Corrosivity</u>	C6. The potential damage from soil corrosivity can be mitigated by using corrosion-resistant materials for buried utilities and systems; specific measures shall be specified by an engineering geologist as appropriate in response to localized conditions.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
	D. HYDROLOGY AND WATER QUALITY				
D3. <u>Erosion and Sedimentation</u>	D3. A comprehensive erosion control and water pollution prevention program shall be implemented during grading and construction. (See EIR text for details.)	Project Applicant with approval by City of Lodi Public Works Director.	Throughout grading and construction of the project.		
D4. <u>Urban Non-Point Pollution</u>	D4. The project shall include stormwater controls to reduce nonpoint pollutant loads. (See EIR text for details.)	Project Applicant with final approval by City of Lodi Public Works Director.	Throughout construction and operation of project.		
	E. BIOLOGICAL RESOURCES				
E3. <u>Loss of Habitat for Special Status Animals</u>	E3. In accordance with the SJMSCP and City of Lodi requirements, the project proponent will pay the applicable in-lieu mitigation fees to compensate for loss of open space and habitat resulting from development of the project site, and will ensure the completion of preconstruction surveys for Swainson's hawks, burrowing owls, and California homed larks, as well as the implementation of specified measures if any of these species are found on the site.	Project Applicant, in accordance with SJMSCP, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
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	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. Disturbance to Burrowing Owls and Raptors	<p>E4. The following measures shall be implemented to ensure that raptors (hawks and owls) are not disturbed during the breeding season:</p> <ul style="list-style-type: none"> • If ground disturbance is to occur during the breeding season (Feb. 1 to Aug. 31), a qualified ornithologist shall conduct a pre-construction survey for nesting raptors (including both tree- and ground-nesting raptors) on site within 30 days of the onset of ground disturbance. These surveys will be based on the accepted protocols (e.g., as for the burrowing owl) for the target species. If a nesting raptor is detected, then the ornithologist will, in consultation with CDFG, determine an appropriate disturbance-free zone (usually a minimum of 250 feet) around the tree that contains the nest or the burrow in which the owl is nesting. The actual size of the buffer would depend on species, topography, and type of construction activity that would occur in the vicinity of the nest. The setback area must be temporarily fenced, and construction equipment and workers shall not enter the enclosed setback area until the conclusion of the breeding season. Once the raptor abandons its nest and all young have fledged, construction can begin within the boundaries of the buffer. • If ground disturbance is to occur during the non-breeding season (September 1 to January 31), a qualified ornithologist will conduct pre-construction surveys for burrowing owls only. (Pre-construction surveys during the non-breeding season are not necessary for tree nesting raptors since these species would be expected to abandon their nests voluntarily during construction.) • If burrowing owls are detected during the non-breeding season, they can be passively relocated by placing one-way doors in the burrows and leaving them in place for a minimum of three days. (Continued on next page.) 	Project Applicant, in consultation with CDFG, and with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	E. BIOLOGICAL RESOURCES (Cont'd)				
E4. (Cont'd)	Once it has been determined that owls have vacated the site, the burrows can be collapsed and ground disturbance can proceed.				
	F. CULTURAL RESOURCES				
F1. <u>Disturbance to Buried Cultural Resources</u>	<p>F1. Implementation of the following measures will mitigate any potential impacts to cultural resources.</p> <ul style="list-style-type: none"> In the event that prehistoric or historic archaeological materials are exposed or discovered during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional archaeologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant cultural materials followed by a professional report. In the event that fossils are exposed during site clearing, grading or subsurface construction, work within a 25-foot radius of the find shall be halted and a qualified professional paleontologist contacted for further review and recommendations. Potential recommendations could include evaluation, collection, recordation, and analysis of any significant paleontological materials followed by a professional report. (Cont'd next page.) 	Project Applicant in consultation with a qualified archaeologist and/or qualified paleontologist, as applicable, with verification of mitigation by City of Lodi Community Development Director.	Throughout grading and construction of project.		

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IMPACTS	MITIGATION MEASURES		RESPONSIBLE PARTY	TIMING	(To be completed by responsible party)	
					DATE	INITIALS
F1. (Cont'd)	• If human remains are discovered, the San Joaquin County Coroner shall be notified. The Coroner would determine whether or not the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who would identify a most likely descendant to make recommendations to the land owner for dealing with the human remains and any associated grave goods, as provided in Public Resources Code Section 5097.98.					
	F. CULTURAL RESOURCES (Cont'd)					
H2. Future Plus Project Unsignalized Intersection Operations	H2. The project shall contribute its fair share cost to the installation of a traffic signal at Lower Sacramento Road and Harney Lane.		Project Applicant with Lodi Public Works Director	Prior to issuance of occupancy permits.		
H4. Cumulative Plus Project Access Conditions at the Signalized Access Drive Proposed Along the Lower Sacramento Road frontage	H4. Modify the project site plan to provide dual eastbound left-turn movements out of the project site onto northbound Lower Sacramento Road, consisting of a 150-foot left-turn pocket and a full travel lane back to the internal project site intersection. In the eastbound direction, a left-turn pocket and a full travel lane back to the signalized intersection will provide adequate capacity for inbound traffic. In addition, STOP signs shall be installed on all approaches except the westbound to provide continuous traffic flow into the project site and eliminate the potential for backups onto Lower Sacramento Road. On the Food 4 Less approach, a 100-foot left-turn pocket will be provided at the signalized intersection.		Project Applicant with Lodi Public Works Director.	Prior to issuance of occupancy permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	H. TRAFFIC AND CIRCULATION (Cont'd)				
H5. <u>Cumulative Plus Project Access Conditions at Northern Unsignalized Access Drive Alone Lower Sacramento Road</u>	H5. The following mitigation measures shall be implemented: A) Extend a third southbound travel lane on Lower Sacramento Road from its current planned terminus at the signalized project driveway to the southern boundary of the project site; B) Construct a 100-foot southbound right-turn lane at the signalized project driveway; C) Extend the southbound left-turn pocket by 100 feet; D) Extend the taper from 60 feet to a City standard 120-foot taper; E) Eliminate the northbound left-turn lane into the northern project driveway (under Alternative B).	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H6. <u>Inadequate Left-turn Lane Taper on Westgate Drive</u>	H6. The project site plan shall be modified to move the north project driveway on Westgate Drive south by 25 feet in order to accommodate the required 90-foot taper length.	Project Applicant with approval of City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H7. <u>Inadequate Left-turn Lane Taper on Lower Sacramento Road</u>	H7. The project site plan shall be modified to extend the northbound left-turn pocket to 250 feet, and extend the taper from 70 to a City standard 120-foot taper.	Project Applicant with approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		
H8. <u>Public Transit Service</u>	H8. The project applicant shall work with and provide fair share funding to the City of Lodi Grapeline Service and the San Joaquin Regional Transit District to expand transit service to the project.	Project Applicant with final approval by City of Lodi Public Works Director.	Prior to issuance of occupancy permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
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	H. TRAFFIC AND CIRCULATION (Cont'd)				
<u>H9. Public Transit Stop</u>	H9. Modify the project site plan to: 1) provide a bus bay and passenger shelter at the proposed transit stop; and 2) include a second transit stop in the eastern portion of the project near Lower Sacramento Road.	Project Applicant, in consultation with City of Lodi Grapeline Service, and with approval of City of Lodi Public Works Director.	Prior to issuance of grading permits.		
<u>H11. Pedestrian Facilities</u>	H11. Pedestrian walkways and crosswalks shall be provided to serve Pads 8, 9, and 12 in order to complete the internal pedestrian circulation system.	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
	I. NOISE				
<u>I3. Noise from Project Activity</u>	<p>13. The following noise mitigation measures are identified as appropriate for the various types of project activities, to reduce project noise at both existing and planned future adjacent development:</p> <p><u>Rooftop Mechanical Equipment.</u> To ensure that the potential noise impact of mechanical equipment is reduced to less-than-significant levels, the applicant shall submit engineering and acoustical specifications for project mechanical equipment, for review prior to issuance of building permits for each retail building, demonstrating that the equipment design (types, location, enclosure specifications), combined with any parapets and/or screen walls, will not result in noise levels exceeding 45 dBA (Leq-hour) for any residential yards.</p> <p><u>Parking Lot Cleaning.</u> To assure compliance with the City of Lodi Noise Regulations regarding occasional excessive noise, leaf blowing in the southeast corner of the project site shall be limited to operating during the hours of 7:00 a.m. to 10:00 p.m.</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of building permits.		

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IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
				DATE	INITIALS
	I. NOISE (Cont'd)				
14. <u>Noise from Stormwater Basin Pump</u>	<p>14. The following measures shall be implemented to mitigate potential noise generated by the stormwater basin pump:</p> <p>1) The pump shall be located as far as is feasible from the nearest future planned residential development. In addition, the noise levels generated by pump shall be specified to produce noise levels no greater than 45 dBA L_{eq} at the nearest residential property lines. The pump facility shall be designed so that noise levels do not exceed 45 dBA at the nearest residential property lines. The pump may need to be enclosed to meet this noise level. Plans and specifications for the pump facility shall be included in the Improvement Plans for the project and reviewed for compliance with this noise criterion.</p> <p>2) In order to avoid creating a noise nuisance during nighttime hours, pump operations shall be restricted to the hours of 7 a.m. to 10 p.m., except under emergency conditions (e.g., when the basin needs to be emptied immediately to accommodate flows from another imminent storm).</p>	Project Applicant with approval of City of Lodi Community Development Director.	Prior to issuance of grading permits.		
15. <u>Construction Noise</u>	H5. Short-term noise impacts shall be reduced through implementation of the following measures: limiting the hours of construction; proper muffling and maintenance of equipment; prohibition of unnecessary idling; noise shielding of stationary equipment and location of such equipment away from sensitive receptors; selection of quiet equipment; notification to neighbors of construction schedule, and designation of a 'noise disturbance coordinator' to respond to noise complaints. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Throughout grading and construction.		

IMPACTS	MITIGATION MEASURES	RESPONSIBLE PARTY	TIMING	IMPLEMENTATION (To be completed by responsible party)	
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	J. AIRQUALITY				
J1. <u>Construction Emissions</u>	J1. Dust control measures shall be implemented to reduce PM ₁₀ emissions during grading and construction, as required by the City of Lodi and the San Joaquin Valley Unified Air Pollution Control District. (See EIR text for details.)	Project Applicant, to be verified by the City of Lodi Public Works Director and City of Lodi Community Development Director.	Throughout grading and construction.		
J3. <u>Regional Air Quality</u>	J3 Project design measures shall be implemented to reduce project area source emissions, and a Transportation Demand Management (TDM) plan should be implemented to reduce project traffic and resulting air emissions; however, these measures would not reduce the impact to a less-than-significant level.	Project Applicant, to be verified by the City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		
J6. <u>Restaurant Odors</u>	J5. All restaurant uses within the project shall locate kitchen exhaust vents in accordance with accepted engineering practice and shall install exhaust filtration systems or other accepted methods of odor reduction.	Project Applicant with approval of City of Lodi Building Official and City of Lodi Community Development Director.	Prior to issuance of building permits.		